

TollFreeNumbers.com

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Federal Communications Commission
Ajit Pai, Chairman
445 12th Street, SW
Washington, DC 20554

July 8, 2019

Re: WC Docket No. 17-192, CC Docket No. 95-155 – REPLY COMMENT FOR AUCTION OF TOLL FREE NUMBERS IN THE 833 CODE

Dear Chairman Pai,

The FCC's current plan to have Somos bypass the Resporg system they administer and auction/sell 833 numbers directly to the Resporg's customers directly rather than through the Resporg's is NOT consistent with the current statutes.

Paragraph 58 in FCC 18-137 in which the Commission establishes Somos as the auctioneer for 833 auction reads as follows:

58. We establish Somos, the Toll Free Numbering Administrator, as the auctioneer for the 833 Auction. *We believe this role is commensurate with its present statutory and regulatory duties and its responsibilities.*

The very second sentence in paragraph 58, assigning Somos to be the auctioneer, is essentially their whole basis for assigning Somos as the auctioneer. Unfortunately, when you realize that they are requiring Somos to bypass the Resporg system that they are statutorily required to support, this is clearly false. They are essentially asking Somos to undermine the system which they are statutorily required to support.

If we break down that sentence it's saying three things. I'm going to document how all three of those things are incorrect. Requiring Somos to compete with and undercut the Resporgs is...

- 1. NOT in the statutes.**
- 2. NOT in their regulatory description (aka Somos Tariff).**
- 3. NOT in their current responsibilities.**
- 4. Even Somos said in their comments that bypassing the Resporgs would cause problems.**

1. Selling anything directly to the public is NOT in any statutes.

The Communications Act of 1934 was passed, June 19, 1934 and it gives the Federal Communications Commission (FCC), the broad power to distribute numbers as long as it's done "fairly and equitably." (see below)

47 U.S.C. § 251(e)(1)

(e)NUMBERING ADMINISTRATION

(1)COMMISSION AUTHORITY AND JURISDICTION

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(<https://www.law.cornell.edu/uscode/text/47/251>)

There's only one statute for that so it's pretty straight forward and it gives them a lot of latitude, as long as they meet impartiality requirements. I won't debate the question of impartiality, though it is questionable whether they can be impartial for a *second role* if it contradicts their existing, primary role of supporting the Responsible Organizations (Resporgs), or the fact that virtually all their revenue comes from the organizations that the FCC is essentially requiring them to promote that the public bypass. There are also regulations that require government agencies to use competitive bidding to avoid the appearance of corruption or an insider deal but that's also not the issue here.

It's a little murkier though when it comes to the Toll Free Number Administrator, (TFNA) acting as the auctioneer, because unlike the FCC, there are numerous orders and statutes regarding the various forms that the TFNA (now Somos) has taken over the years. The FCC doesn't say that serving as the auctioneer IS consistent with the statutes. They say they BELIEVE it is consistent, because there isn't just one statute to quote here like there is for the FCC's authority. There are orders creating the DSMI, that was the first administrator, then they created the SMS/800. There is another order making the SMS/800 more independent from the original RBOCS allowing them to write their own tariff. There are probably half a dozen different orders that describe the roles of the TFNA over the years, and if you follow their footnote citations you will get even more confused. I spent several days tracking down and going through dozens of references to the various stages of the TFNA, but none of them ever even consider, let alone mention or reference anything about any version of the TFNA ever having anything to do directly with the public in any way shape or form.

I could list a dozen or more different sources and orders and while it might look impressive to fill a whole page of footnotes or have hundreds of pages of attachments, it wouldn't prove that it doesn't exist somewhere else, because you can't prove a negative by quoting all the sources that DON'T include something. You can make a good showing of it if there is just one statute or regulation, but since the TFNA has been called a number of things and evolved over the years, that's not the case. I can say quite certainly though that at no point has any version of the TFNA or anything like it, ever sold anything to the public or to the customers of their customers, the Resporgs. If they are only servicing the Resporgs it could be consistent with their role but the public auction the FCC is proposing is clearly NOT consistent *or even compatible with* the role of the TFNA.

I believe the FCC had good intentions and when they expressed their belief that establishing Somos as the auctioneer was consistent with their current role, because they had probably not decided to have them offer the numbers to the public and didn't realize how detrimental to the system that would be. If you take out the one paragraph about offering numbers to the public, it *would* be consistent with their role of supporting the Resporgs.

2. Selling anything directly to the public is NOT in Somos Tariffs and never has been

Tariffs have been in the news a lot in the past year, but this is a different meaning of the word tariff than Donald Trump is using. In addition to the taxes charged on imports, a tariff can also be the posted or fixed prices that utilities charge. Somos has a good description of their tariff on their current website. "The tariff contains the regulations, rates and charges applicable to the provision of the SMS/800 Toll-Free Number Registry (TFN Registry) (formerly the 800 Service Management System (SMS/800)) functions and support services for Toll-Free Numbers."

I've attached this as well as a page that explains why Somos files a tariff, and thirdly, their current tariff issued February 5, 2018. All three of these are included in **Attachment A**. Their tariff goes through in great detail every aspect of their business, but selling or auctioning numbers directly to the public is **NOT in the SMS tariff**. They've NEVER sold a single thing to the public, not to mention something competing with their own customers. The fact that it's not in the current (or any previous tariff), is the best evidence of all that it's clearly NOT commensurate with their present responsibilities.

While looking through the Somos website I found a picture that explains very easily HOW Somos works. This is from their website and probably shows better than a million legal documents that offering numbers directly to the public is NOT consistent with their current role.



This was on the Somos new website in 2015. I found and saved it from the Wayback Machine. The full website for context is also included in **Attachment A**.

3. Selling anything directly to the public is NOT in Somos current responsibilities.

I've also gone through every footnote and found a couple definitions of the TFNA, SMS Database, DSMI or NANPA and not only is it not in the definition of Toll Free Number Administrator (TFNA) but it isn't in any previous or similar database administration definition either. No number administrator like this, at least in the US, supports or has *ever* supported, both phone companies and their end subscribers.

Definitions:

47 CFR § 52.101 - General definitions

- (a) **Toll Free Numbering Administrator (TFNA).** The entity appointed by the Commission under its authority pursuant to 47 CFR § 52.101(e)(1) that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.
- (d) **Service Management System Database ("SMS Database").** The administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control. The Service Management System shares this information with the Service Control Points. The entire system is the SMS database.

47 CFR § 251 - Interconnection

(e) Numbering Administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the north American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating State commissions or other entities all or any portion of such jurisdiction.

47 CFR § 52.101 - General definitions

- (a) **Number Administration and Service Center ("NASC").** The entity that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.

The sources of these definitions are included in **Attachment B**. None of these definitions have ever included the end user or subscriber being able to obtain any service directly from the TFNA or NASC, and that change can NOT be said to be consistent or commensurate with their present statutory or regulatory duties or their responsibilities!

4. Somos said in their comments that bypassing the Resporgs would cause problems.

The fourth point is that Somos itself, said in their comments to the FCC that selling numbers to the public, *"would introduce unnecessary and potentially costly administrative problems,"* and *"undermine this delegation of responsibility to Resp Orgs."*

Somos did say in their comments to the FCC that they could act as auctioneer in paragraph C, but that was *after* they said it had to be through the Resporgs in paragraph B. So their statement that they could handle it was based on their previous statement, that it had to be done through the Resporgs. Paragraph B was over a full page, of the 8 page comment and is extremely well written and says not only that it had to be done through the resporgs but explains WHY they can't open it up to the public. I've also read every comment and every reply and there's no reason to open this up to the public as strong as Somos' reasons not to!

B. Auction Participation Should Be Limited to Resp Orgs

To the extent the Commission implements an auction-based assignment mechanism, Somos supports the Commission's further proposal to limit participation in any auction to Resp

Orgs, as defined in 47 C.F.R. § 52.101(b).⁸ Resp Orgs are the only entities that possess both the expertise and the functional capabilities needed to effectively participate in a market-wide auction proceeding. They are essential partners who bring stability to the toll-free numbering process by ensuring that TFNs are assigned, routed, and managed accurately and in accordance with the Commission's rules. Further, as the Notice suggests,⁹ Resp Orgs have a system-wide perspective that would allow them to make markets in an auction and guide subscribers to bidding strategies that maximize value for the system as a whole.

Somos does not support direct subscriber participation in any TFN auction because it would introduce unnecessary and potentially costly administrative problems. Somos believes that any TFN auction mechanism should build on the functionalities of the SMS/800 database and be implemented consistent with the technical and procedural characteristics of that database. To achieve those efficiencies, Somos believes that it makes sense to limit auction participation to the Resp Orgs that are currently certified to have access to the SMS/800 database.¹⁰ Having access to the SMS/800 database requires Resp Orgs to take on defined obligations that ensure that the integrity of the database is maintained and that TFNs operate correctly, including becoming certified in the complex process of routing TFNs. Allowing subscriber participation in TFN auctions would undermine this delegation of responsibility to Resp Orgs and would require either constructing an auction mechanism outside of the existing SMS/800 database or qualifying a large number of new entities to access and use that database. Either of these options would be burdensome and complicated, thus impeding an effective and efficient auction.

Somos full comments date 11/7/2017 are included in **Attachment C**. With Somos comments in mind, that they can essentially only administer an auction through the Resporgs, I'd like to review paragraph 60 of FCC-18-137A1, 9/27/2018. This full order included in **Attachment D**.

60. One commenter posits that the present Toll Free Numbering Administrator should not serve as the toll free number auctioneer because Somos "has no experience in conducting auctions" and it "would be called upon to develop entirely new [auction] processes." We disagree. *Somos has asserted that it is fully capable of executing the Commission's proposed auction*, and we have no basis on which to question its assertion. Moreover, given the considerable expertise in number assignment and administration that Somos has gained since the Commission formally designated it as the Toll Free Numbering Administrator, we are confident that Somos will perform its auctioneer duties in accordance with the procedures established by the Auction Procedures Public Notice.

Somos did not say it was capable of executing the Commissions proposed auction. It said that it was capable of administering an auction among the Resporgs, and said quite clearly that it would cause major problems to allow the public to participate. This is not a small point, these are major problems, changing both their role and the statutory role of the Resporgs.

Why does this really matter?

The main point of this letter is to point out that asking Somos to sell competing services at a lower price to the end users of the Resporgs that they are required to support, isn't commensurate with their existing role at all. Even more than that, it actually *CONFLICTS* with their current statutory responsibilities, and they shouldn't be forced to do something that literally hurts and may ultimately put some of the customer Somos is required to support, *out of business*. I also think it's important to explain why I am

really pushing this point, because it will ultimately be extremely bad for the toll free industry to make such a sweeping change, and make no mistake that's what this really is.

The FCC added the option to allow customers to go directly to Somos in an attempt to give consumers more options and decrease the cost by increasing the competition. That all sounds good on the surface, but just like offering a free public health insurance option wouldn't increase competition, it would decrease the consumers options and destroy the free market. The same thing will clearly happen in the toll free industry. No business can compete with the vendor or supplier of an item that's offering it for free to the public. The FCC is directing Somos to accept bids for free and at the same time allowing them to spend any amount of money they want on the software and infrastructure which they'll take out of the proceeds.

No resporg can compete with that. It will take considerable time and money to create a system to accept customer bids, collect the payments and submit those bids to Somos, make all the payments and refunds, not to mention promoting it, answering questions, and explaining it for customers. No Resporg is going to invest all that time and effort to do this, especially for a test, just to then have Somos offer it for free. They'll all just not talk about it and refer the few customers that do ask for it, to Somos. That means the only ones that know who the customers even are, have no incentive to even participate or promote it, and the consumer has NO choices at all. Every customer that wants an 833 number will be forced to go through Somos, which definitely explains the "costly administrative problems" they predicted.

Afterwards, Somos will of course declare it a success no matter how it goes, and say that they now have this great capability for all future code openings and even the dropping numbers. In their comments, Somos said it would, "undermine this delegation of responsibility to Resp Orgs." In other words, in one foul swoop, they will have taken the number acquisition responsibility away from all Resporgs. This isn't creating a free market, it's destroying it. It's not increasing the competition, it's killing it, just like offering a free public option for health insurance would do to the healthcare industry.

The FCC NPRM 9/28/17 asked for comments about the TFNA administering the auction (paragraph 24) but at that point nobody would have expected an auction to be open to the public, something that had never been done before. The Somos comments were quite clear that they could NOT do it so why would anyone expect that the FCC would both require Somos to administer it as well as open it up to the public, bypassing the Resporgs. This combination wasn't foreseeable and nobody had a chance to consider how this combination would impact the industry.

There are three Solutions

Again, I believe the decision to allow the public to bypass their Resporgs and go directly to Somos, was made after the decision to have Somos administer it and after they wrote the opening. So, at the time they wrote the opening, it actually was more *commensurate with its present statutory and regulatory duties and its responsibilities*, and that was probably a much more reasonable statement than it is now. Whoever decided to allow the public to bypass the existing system, didn't realize how that made the basis for choosing Somos as the administrator false, and the problems it would cause Somos or what it would do to the whole Resporg System and the toll free industry.

Somos may change their tariff but that doesn't fix the problems that Somos said this would cause, or make the FCC's statement true. If Somos changes it's tariff, that could actually be seen as an admission

that the FCC's statement is FALSE. Changing the tariff to include things not in the statutes is also very problematic and wouldn't make it comply with the statutes.

On a side note, I think it's also appropriate to point out what Commissioner Micheal O'Rielly said in his comments about the FCC-18-137 Order, *"exactly how is it that no one asked what Somos' estimated costs would be?"* He would have preferred a *"competitive bidding process, rather than designate it to the toll free administrator automatically."* I believe just putting it to bid could easily have saved 80% of the cost without diminishing at all the results.

This is a FATAL flaw, because in plain English, what they're doing isn't as legal, or statutorily consistent, as they suggested it was, to say the least. The FCC still has time to fix this, but they have to do one of at least three things that could remedy this.

1. They could preclude the public from the auction.
2. They could specify an independent outside organization to administer the auction who doesn't already have a competing statutorily defined responsibility.
3. They could change the regulations regarding the TFNA's role and the whole system they support, allowing them to compete with the Resporgs that they support.

Those are the only three options I see at this point.

Somos won't come out and say directly that they can't do what the FCC (their BOSS) wants, and what they originally suggested, but if you read their own comments carefully, they're saying it as clearly (and politely) as they can. Stopping and taking a breath to consider the very real ramifications and options, (as much as we all want to get this over with) is well worth any small additional delay. We all want this to be a success and beneficial to the industry, but the current plan won't do either of those. There's a good chance that whatever we do for this "test" will become the new normal or mean we never do anything else like this.

I love the toll free business and have spent two and a half decades promoting and helping everyone in it, and can't sit idly by and watch it be hurt like this.

Very sincerely,



Bill Quimby
President of TollFreeNumbers.com

Attachment

Attachment A

Tariff

HOME > TARIFF

Somos, Inc. is proud to be the holder of the Federal Communications Commission (FCC) 800 Service Management System (SMS/800) Functions Tariff. The tariff contains the regulations, rates and charges applicable to the provision of the SMS/800 Toll-Free Number Registry (TFN Registry) (formerly the 800 Service Management System (SMS/800)) functions and support services for Toll-Free Numbers. To learn more about the tariff and how Somos is supporting the telecommunications industry, we encourage you to check out our blog ["Why Does Somos File a Tariff?"](#) For those interested in reading the tariff in its entirety, a full-copy can be found via the following link:

[800 Service Management System \(SMS/800\) Functions Tariff - FCC No. 1](#)



← ME > INSIGHTS > WHY DOES SOMOS FILE A TARIFF?

Why Does Somos File a Tariff?

SHARE

JAN 29, 2019

When I talk to my friends and family about my job, and tell them that I'm filing the annual tariff for Somos, Inc. at the end January, they get confused. They think of the more common tariff definition – duties and fees imposed by a government on imports and exports.

Those of us who work in telecommunications know that there is a different type of tariff that is filed at the Federal Communications Commission (FCC). In the telecom world, a tariff contains the rates, terms and conditions of services provided by regulated telecommunications carriers.

Somos is unique in that we file a tariff, but are not a telecommunications carrier. So why does Somos file an FCC tariff?

In 1993, the FCC mandated Toll-Free Number portability. In that order, the FCC required the Regional Bell Operating Companies (BOCs) to provide Toll-Free Number portability. The FCC required the BOCs to file a tariff, known as the 800 Service Management Systems (SMS/800) Functions Tariff, for this service, as the BOCs were incumbent local exchange carriers and the sole source for this service.

In 2013, the FCC approved the transition of SMS/800 tariffing responsibilities from the BOCs to Somos (then called SMS/800, Inc.). When that happened the tariff, including its title, remained substantially the same.

Therefore, the FCC requires Somos to file an annual SMS/800 tariff to update terms and rates for the coming year. Somos, however, can file tariffs more often. In fact, we filed three times in 2015 – once for the annual filing, once to add the new Centralized Responsible Organization Change (ROC) Feature into the tariff, and once to update our corporate name to Somos, Inc.

For 2016, we filed our annual tariff on January 29, and our new terms and rates went into effect on February 15. Click on the link below to view a copy of the tariff.

[SMS/800 Functions Tariff](#)

One very important change in our annual filing is the new banking information. Responsible Organizations (Resp Orgs) have already received information on our banking change, and you can get additional information by logging into the "Resources" section of the [Somos Portal Website](#). Automated Clearing House (ACH) payments should now go to our new JP Morgan Chase bank account, instead of our former Mellon Bank account.

Now that you have read this blog, you too can be the life of the party by explaining to your friends and family the difference between international trade tariffs and FCC tariffs and retell the exciting tale of why Somos, a non-carrier, files an FCC tariff!

KEY TAKEAWAYS:

In world, a tariff contains the rates, terms and conditions of services provided by regulated telecommunications carriers.

Bernstein

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SUBMIT

**800 Service Management System (SMS/800) Toll-Free
Number Registry (TFN Registry) Functions**

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Regulations, Rates and Charges
Applying to the Provision of
SMS/800 TFN Registry
Functions and Support Services

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x Issued under authority of Order, *In re Toll Free Service Access Codes*, 28 FCC Rcd 15328 (2013).
All matter in this tariff is new.

TFN REGISTRY FUNCTIONS

T

CHECK SHEET

Title page 1 and Pages 1 through 71 inclusive of this tariff are effective as of the date shown. Original and revised Pages as named below contain all changes from the original tariff that are in effect on the date hereof.

<u>Page</u>	<u>Number of Revision Except as Indicated</u>	<u>Page</u>	<u>Number of Revision Except as Indicated</u>	<u>Page</u>	<u>Number of Revision Except as Indicated</u>
Title Page 1	1st*	34	1st*	67	1st*
1	3rd*	35	1st*	68	1st*
2	1st*	36	1st*	69	1st*
3	1st*	37	1st*	70	3rd
4	1st*	38	1st*	71	3rd
5	1st*	39	1st*		
6	1st*	40	1st*		
7	1st*	41	1st*		
8	1st*	42	1st*		
9	1st*	43	2nd*		
10	3rd*	44	1st*		
11	3rd*	45	1st*		
12	1st*	46	1st*		
13	1st*	47	1st*		
14	1st*	48	1st*		
15	1st*	49	1st*		
16	1st*	50	1st*		
17	1st*	51	1st*		
18	1st*	52	2nd*		
19	1st*	53	1st*		
20	1st*	54	1st*		
21	1st*	55	1st*		
22	1st*	56	1st*		
23	1st*	57	1st*		
24	1st*	58	1st*		
25	1st*	59	1st*		
26	1st*	60	1st*		
27	1st*	60.1	Original*		
28	1st*	61	1st*		
29	1st*	62	2nd*		
30	1st*	63	2nd*		
31	1st*	64	1st*		
32	1st*	65	1st*		
33	2nd*	66	1st*		

* New or revised page

TFN REGISTRY FUNCTIONS

T

Table of Contents

	Page No.
Check Sheet	1
Concurring Carriers	7
Connecting Carriers	7
Other Participating Carriers	7
Registered Service Marks	7
Registered Trademarks	7
Explanation of Symbols	8
Explanation of Abbreviations	8
Reference to Technical Publications	10
1. Application of Tariff	12
2. General Regulations	13
2.1 Undertaking of the Company	13
2.1.1 Scope	14
2.1.2 Limitations	17
2.1.3 Liability	18
2.1.4 Number Administration	20
2.1.5 Disclaimer of Representations and Warranties	20
2.1.6 Notification of Service Affecting Activities	21
2.1.7 Provision and Ownership of Toll-free Telephone Numbers	22
2.1.8 Suspension and Discontinuance of Service	23
2.2 Use	24
2.2.1 Limitations of Use	24
2.2.2 Unlawful Use	24
2.2.3 Limitation on Resource Use	26
2.2.4 FCC Fees	27
2.2.5 FCC Coordination	27
2.3 Obligations/Responsibilities of the Resp Org	28
2.3.1 General Responsibilities	28
2.3.2 Service Establishment	32
2.3.3 Representations and Warranties of the Resp Org	35
2.3.4 Insurance and Claims and Demands for Damages	35
2.3.5 System Security	36
2.3.6 Protection of TFN Registry Logon Identification Codes and Passwords	37
2.3.7 Additional Responsibilities of the Resp Org	38

T

TFN REGISTRY FUNCTIONS

T

Table of Contents

	Page No.	
2. General Regulations (Cont'd)		
2.4 Payment Arrangements and Credit Allowances	39	
2.4.1 Payment Arrangements	39	
2.4.2 Credit Allowance for Service Interruption	44	
2.5 TFN Registry Security Features	46	T
2.5.1 General	46	
2.5.2 TFN Registry Environment	46	T
2.6 Proprietary Information	47	
2.6.1 General	47	
2.7 Definitions	51	
Application Program Interface (API)	51	T
Area of Service (AOS)	51	
Call Processing	51	
Centralized Resp Org Change (ROC) Management System	51	
Exchange	51	
Exchange Access	51	
Graphical User Interface (GUI)	51	T
Interexchange Carrier (IC)	51	
Local Access and Transport Area (LATA)	51	
Local Exchange	51	
Local Exchange Carrier (LEC)	51	
Mechanized Generic Interface (MGI)	52	
North American Numbering Plan (NANP)	52	
Numbering Plan Area (NPA)	52	
Proprietary Information	52	
Responsible Organization (Resp Org)	52	
Service Control Points (SCP)	52	

TFN REGISTRY FUNCTIONS

T

Table of Contents

	Page No.	
2. General Regulations (Cont'd)		
2.7 Definitions	53	
Security Key	53	
SMS/800 Toll-free Number Registry (TFN Registry) (formerly SMS/800)	53	T
Terminal	53	
Toll-free Number Administration	53	
Toll-free Number Search and Reservation	53	
Toll-free Service Provider	53	
Toll-free Service Provisioning	53	
Toll-free Subscriber	53	
Web Services Interface (WSI)	53	
3. Service Offerings	54	
3.1 Services Available to Toll-free Resp Orgs	55	
3.1.1 Number Search and Reservation	55	
3.1.2 Customer Record Creation and Modification	55	
3.1.3 Request Reports	56	
3.2 Service Assistance Corrective Actions	57	

TFN REGISTRY FUNCTIONS

T

Table of Contents

	Page No.	
3. Service Offering (Cont'd)		
3.3 TFN Registry Access	57	T
3.3.1 Non-Dedicated Access Requirements	58	
3.3.2 Dedicated Terminal Access Requirements	59	
3.3.3 Mechanized Generic Interface (MGI) Access Requirements	59	
3.3.4 Web Services Interface (WSI) Access	60	
3.3.5 TFN Registry API Interface	60	N
3.3.6 TFN Registry GUI Interface	60	N
3.4 Batch Update Process	60.1	T
3.5 Mechanized Generic Interface (MGI) Testing	61	T
3.5.1 Laboratory Test Requirements	61	
3.5.2 Field Test Requirements	61	
3.5.3 Test Duration	61	
3.5.4 Technical References for Testing Requirements	61	
3.6 Change of Resp Org	62	
3.6.1 Resp Org Change Using Centralized Resp Org Change Management System	62	
3.6.2 Resp Org Change Performed by Company	62	
3.7 Additional Copies of Monthly Bill	63	

TFN REGISTRY FUNCTIONS

T

Table of Contents

Page No.

4 Schedule of Rates and Charges

64

4.1 Rate Regulations

64

4.1.1 Types of Rates and Charges

64

4.1.2 Rate Elements

65

4.1.3 Minimum Service Period

69

4.1.4 Bill Level Detail

69

4.2 Rates and Charges

70

TFN REGISTRY FUNCTIONS

T

CONCURRING CARRIERS

NO CONCURRING CARRIERS

CONNECTING CARRIERS

NO CONNECTING CARRIERS

OTHER PARTICIPATING CARRIERS

NO OTHER PARTICIPATING CARRIERS

REGISTERED SERVICE MARKS

NONE

REGISTERED TRADE MARKS

SMS/800

TFN REGISTRY FUNCTIONS

T

EXPLANATION OF SYMBOLS

- C - To signify a changed regulation
- D - To signify a discontinued rate or regulation
- I - To signify an increase
- M - To signify matter relocated without change
- N - To signify new rate or regulation
- R - To signify a reduction
- S - To signify a reissued matter
- T - To signify a change in text but no change in rate or regulation
- Z - To signify a correction

EXPLANATION OF ABBREVIATIONS

- | | | | |
|-----|---|-------------------------------|---|
| AOS | - | Area of Service | |
| API | - | Application Program Interface | N |
| GUI | - | Graphical User Interface | N |
| IC | - | Interexchange Carrier | |
| ID | - | Identification | |

TFN REGISTRY FUNCTIONS

T

EXPLANATION OF ABBREVIATIONS (Cont'd)

LEC	-	Local Exchange Company
MGI	-	Mechanized Generic Interface
NANP	-	North American Numbering Plan
NPA	-	Numbering Plan Area
OS	-	Operations System
Resp Org	-	Responsible Organization
ROC	-	Resp Org Change
SCP	-	Service Control Point
SMS	-	Service Management System
SMS/800	-	800 (Toll-free) Service Management System
SSP	-	Service Switching Point
STP	-	Signal Transfer Point
TFN Registry	-	Toll-free Number Registry
UAL	-	User Application Layer
UPL	-	User Program Layer
WSI	-	Web Services Interface

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TFN REGISTRY FUNCTIONS

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REFERENCE TO TECHNICAL PUBLICATIONS

The following technical publications are referenced in this tariff and current issues may be obtained from the Somos website (<http://www.somos.com>).

BR 780-004-221 Issue 43	User Guide: 3270* March 2017	Available: March 2017	T T
BR 780-004-280 Issue 31	User Guide: Web Based Access (WBA) March 2017	Available: March 2017	T
BR 780-004-227 Issue 21	User Guide: 3270 Service Provider Reports* December 2015	Available: December 2015	T
BR 780-004-282 Issue 19	User Guide: Web Based Reporting System (WRS) May 2017	Available: May 2017	T
ROCGUIDEUSR01 Version 9, Issue 1	User Guide: Resp Org Change System January 2018	Available: January 2018	T
SMS/800 Toll-Free Number Registry User Guide Version 3, Issue 1	November 2017	Available: December 2017	N N
SMS/800 Toll-Free Number Registry: API Overview Version 1.3.6_111, Issue 1	December 2017	Available: December 2017	N N

* Note: 3270 access will no longer be available as of October 31, 2018.

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TFN REGISTRY FUNCTIONS

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REFERENCE TO TECHNICAL PUBLICATIONS (Cont'd)

The following technical publications are referenced in this tariff and current issues may be obtained from the Somos website (<http://www.somos.com>).

SR-4592	SMS/800 Mechanized Generic Interface (MGI) Specification		
Issue 20	March 2017	Available: March 2017	T
SR-4592 Addendum	SMS/800 MGI Industry Test Plan		
Issue 19	November 2016	Available: November 2016	
SR-5120	CR Batch Update and Response Specification		
Issue 7	December 2015	Available: December 2015	
UIS-SMS-201	SMS/800 Data Center Network Connectivity Guide		
Version 8, Issue 7	January 2018	Available: January 2018	T
ROCSPECWSI01	Resp Org Change (ROC) System Web Service Interface Specification		T
Version 2.20, Issue 1	January 2018	Available: January 2018	T
ROCSPECWSI02	Resp Org Change System Notification Subscriber Web Services Interface Specification		T
Version 2.16, Issue 1	January 2018	Available: January 2018	T

TFN REGISTRY FUNCTIONS

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1. Application of Tariff

- 1.1 This tariff contains regulations, rates and charges applicable to the provision of the SMS/800 Toll-Free Number Registry (TFN Registry) (formerly the 800 Service Management System (SMS/800)) functions and support services for toll free telephone numbers. Somos, Inc., as the issuing carrier, is referred to hereinafter as the Company.

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TFN REGISTRY FUNCTIONS

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2. General Regulations**2.1 Undertaking of the Company**

The company provides TFN Registry functions to Responsible Organizations (Resp Orgs) through operation of the TFN Registry. TFN Registry is an operations and administrative support system used for the creation and maintenance of call processing records for toll-free telephone numbers. It is also the source of toll-free number availability and reservation status information.

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The TFN Registry will receive from the Resp Org the toll-free subscriber record and call routing information associated with the toll-free numbers reserved by, or assigned to, the Resp Org. These records will be downloaded to the appropriate Service Control Points (SCPs), (hereinafter referred to as databases), based on the area of service indicated in each record, subject to technical constraints.

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Historically only the 800 Service Access Code was reserved for toll-free calling and was administered through the TFN Registry. However, the projected exhaust of toll-free 800 numbers resulted in the industry selection of additional codes to augment the diminishing supply. The additional codes are 888, 877, 866, 855, 844, 833 and 822, which are opened sequentially as existing codes exhaust. The generic terms "800 number" and "toll-free number" throughout this tariff refer equally to all open toll-free codes.

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TFN REGISTRY FUNCTIONS

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2. General Regulations**2.1 Undertaking of the Company****2.1.1 Scope****(A) Operation and Maintenance**

The Company shall be responsible only for the operation and maintenance of the TFN Registry services it provides.

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(B) Service Provided

The Company does not undertake to transmit messages under this tariff, but furnishes the use of its services to Resp Orgs for the creation and maintenance of toll-free call processing records.

(C) TFN Registry Accessibility

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The TFN Registry is accessible 24 hours per day, seven days per week, except for planned downtime as described in 2.1.6 following.

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(D) Company Obligations to Resp Orgs

(1) The TFN Registry includes a security system designed to ensure that proprietary information will be accessible through the TFN Registry only to the Resp Org and the Company. The Company will furnish the Resp Org with information outlining the TFN Registry's security system and will explain the Resp Org's security responsibilities. More detailed information on the TFN Registry security features is set forth in 2.5 following.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.1 Scope (Cont'd)

(D) Company Obligations to the Resp Orgs (Cont'd)

- (2) After a Resp Org has been established pursuant to 2.3.2 following, the Company will assign the Resp Org an TFN Registry logon identification code or codes. The Company will treat Resp Orgs' TFN Registry passwords as proprietary information and will not disclose them to any other party. The Company will be responsible for all charges incurred from any unauthorized use arising from the Company's breach of its obligations under this paragraph. T
- (3) The Company will assist the Resp Org in the analysis and resolution of trouble conditions encountered in interfacing with the TFN Registry and will generate resulting trouble reports. T
- (4) At the Resp Org's request, the TFN Registry will generate the reports specified in 3.1.3, following. T

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.1 Scope (Cont'd)

(E) Operating Assistance

- (1) The Company's Help Desk will be accessible 24 hours per day, seven days per week. Assistance will be provided from the Help Desk to customers with regard to the operation of the TFN Registry from 6:00 AM Monday through 12:00 Midnight Saturday, Central Time, except for the holidays listed below. Assistance will be provided from remote locations from 12:00 Midnight Saturday through 6:00 AM Monday, Central Time as well as on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, and New Year's Eve.
- (2) The Help Desk assistance specified herein will include assistance in resolving any data input problems and correcting any input errors. The contact number for obtaining Help Desk operating assistance is 1-844-HEY-SOMOS (844-439-7666, Option 1).

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.1 Undertaking of the Company (Cont'd)****2.1.2 Limitations**

- (A) The Resp Org may not assign or transfer the use of services provided under this tariff except as follows. Where there is no interruption of use of the service, such assignment or transfer may be made to:
- (1) another Resp Org, whether an individual, partnership, association or corporation, provided the assignee or transferee assumes all outstanding indebtedness for such services, and the unexpired portion of the minimum period applicable to such services, if any; or
 - (2) a court-appointed receiver, trustee or other person acting pursuant to law in bankruptcy, receivership, reorganization, insolvency, liquidation or other similar proceedings, provided the assignee or transferee assumes the unexpired portion of the minimum period applicable to such services, if any.

In all cases of assignment or transfer, the written acknowledgment of the Company is required prior to such assignment or transfer which acknowledgment shall be made within fifteen (15) days from the receipt of notification. All regulations and conditions contained in this tariff shall apply to such assignee or transferee.

The assignment of services does not relieve or discharge the assignor or transferor from remaining jointly or severally liable with the assignee or transferee for any obligations existing at the time of the assignment or transfer.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.2 Limitations (Cont'd)

- (B) The services offered herein will be provided on a first-come, first-served basis, except as determined by the Federal Communications Commission.

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2.1.3 Liability

- (A) With respect to any claim or suit, by a Resp Org or by any others, for damages associated with the provision, termination, maintenance, or restoration of service, and subject to the provisions of (B) through (J) following, the Company's liability, if any, shall not exceed an amount equal to the proportionate charge for the service for the period during which the service was affected. This liability for damages shall be in addition to any amounts that may otherwise be due the Resp Org under this tariff as a Credit Allowance for a Service Interruption.
- (B) The Company shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall the Company for its own act or omission hold liable any other carrier or customer providing a portion of the service.
- (C) The Company shall be indemnified, defended and held harmless by the Resp Org and its toll-free subscriber against any claim, loss or damage arising from the use of services offered under this tariff, involving:
- (1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Resp Org's or its toll-free subscriber's own communications;
 - (2) Claims for patent infringement arising from the Resp Org's or its toll-free subscriber's acts combining or using the service furnished by the Company in connection with facilities or equipment furnished by the Resp Org; or
 - (3) All other claims arising out of any act or omission of the Resp Org in the course of using services provided pursuant to this tariff.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.3 Liability (Cont'd)

- (D) The company shall not be liable for any loss or damage sustained by the Resp Org or by any third party by reason of defects or malfunctions in the hardware or software provided by the Resp Org to access the TFN Registry, or by reason of errors made by the Resp Org in connection with accessing the TFN Registry. T
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- (E) The Company shall not be liable for any loss or damage sustained by the Resp Org or by any third party by reason of defects or malfunctions in any SCP, STP, or SSP, or any other facilities, hardware or software used by local exchange carriers, interexchange carriers, or others to process or route calls to toll-free service access code numbers.
- (F) The Company and its subcontractors and agents are not liable for any loss of revenue or profit by the Resp Org or its toll-free subscriber or for any loss or damage arising out of this tariff or out of the use of the TFN Registry or any of the services provided under this tariff by any person, whether arising in contract, tort (including without limitation negligence or strict liability) or otherwise and whether or not informed of the possibility of such damages in advance. T
- (G) The Company will not bill the Resp Org for any charges attributable to those capabilities of the TFN Registry which are unavailable during periods that the TFN Registry fails to function properly subject to the provisions in 2.4.2 following. If the TFN Registry fails to function properly, the Company shall undertake all necessary efforts to correct the problem. T
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- (H) No license under patents (other than the limited license to access and use TFN Registry) is granted by the Company or shall be implied or arise by estoppel, with respect to any service offered under this tariff. The Company will defend the Resp Org against claims of patent infringement arising solely from the use by the Resp Org of services offered under this tariff and will indemnify the Resp Org for any damages awarded based solely on such claims. T
- (I) Notwithstanding anything to the contrary contained within this tariff, whether express or implied, the Company assumes no liability for services procured under this tariff when used in any method or process.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.3 Liability (Cont'd)

- (J) The Company's failure to provide or maintain service under this tariff shall be excused by fire, flood, explosion, war, strike, embargo, failure of carriers or suppliers, government requirement, civil or military authorities, act of God or by the public enemy, or other similar causes beyond the control of the company, subject to the Credit Allowance for a Service Interruption as set forth in 2.4.2 following.

2.1.4 Number Administration

The TFN Registry keeps track of the availability of all toll-free numbers and allows Resp Orgs with number reservation capabilities to search for spare numbers and change their status. The Company, acting upon instructions from the North American Numbering Plan (NANP) Administrator, makes toll-free numbers available or unavailable for use within the TFN Registry. Rules regarding the quantity of numbers a Resp Org can reserve are contained in 47 CFR, Chapter 1, Paragraph 52.109 of the FCC's rules.

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2.1.5 Disclaimer of Representations and Warranties

- (A) This tariff is for services only and does not encompass the sale or license of software, hardware, or any computer system.
- (B) The Company makes no representation or express or implied warranties or guarantees, to the Resp Org or to any third party, concerning the quality of any services provided under or in connection with this tariff. The Company disclaims, without limitation, any warranty or guarantee of merchantability or fitness for a particular purpose, any warranty or guarantee arising from a course of performance, course of dealing or from usages of trade, or any warranty or guarantee against intellectual property claims by way of infringement.
- (C) The Company does not promise, warrant or represent that the services provided under this tariff will be error free or that the TFN Registry will operate without interruption.
- (D) Except as specifically provided in 2.1.3 preceding and 2.4.2 following, the Company is not liable for damages incurred due to TFN Registry down- time, delays or security breaches or errors which may be incurred in connection with the provision of the services described in this tariff.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.1 Undertaking of the Company (Cont'd)****2.1.6 Notice of Service Affecting Activities**

The Company will provide the Resp Org reasonable notification of service-affecting activities that may occur in normal operation of its business. Examples of service-affecting activities include, but are not limited to the following.

(A) Scheduled TFN Registry Downtime

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Scheduled TFN Registry system downtime is neither an error nor a system malfunction. Routine scheduled system downtime required for such activities as major software installations and environment maintenance and upgrades, will occur approximately once a month and will last for approximately four (4) hours per event, except for the annual disaster recovery exercise that will last for up to twelve (12) hours. Resp Orgs will be notified of scheduled downtime at least fourteen (14) days in advance of the scheduled downtime event. Non-routine scheduled system downtime, required for such activities as database reorganizations and minor software installation, will be required from time to time, and Resp Orgs will be notified of such non-routine scheduled downtime at least twenty-four (24) hours in advance thereof by means of an TFN Registry electronic mail message. The Company will work with all Resp Orgs to ensure that routine and non-routine scheduled system downtime occurs at the time and in the manner least disruptive to all parties. An annual maintenance schedule for the following calendar year will be announced no later than October 31st of each year.

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(B) NPA Splits/Overlays

Resp Orgs will be notified of NPA splits and overlays a minimum of one year before the effective date of the change, or as soon as the Company is notified by the NANP Administrator in those cases where a lead time of less than one year is given.

(C) TFN Registry Resp Org Format and Interface Changes

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The Company will provide a minimum sixty (60) days advance notice to Resp Orgs of any significant specification changes in the MGI, API, and WSI. The Company will also notify Resp Orgs of any significant retraining as may be required by a major update, modification, and/or enhancement to any TFN Registry procedures which affect the Resp Org. The scheduling of any necessary formal retraining will be handled by the Company.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.7 Provision and Ownership of Toll-free Telephone Numbers

No individual or entity (e.g., subscriber/assignee, service provider, etc.) shall acquire any interest in, or proprietary right to, any toll-free telephone number assigned to the toll-free subscriber. However, toll-free subscribers and/or their assignees can retain a specific toll-free number despite changes in Service Providers and/or Resp Orgs.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.1 Undertaking of the Company (Cont'd)****2.1.8 Suspension and Discontinuance of Service****(A) When Service May Be Suspended or Discontinued**

If a Resp Org fails to comply with 2.2, 2.3.2, 2.3.4, 2.3.5 or 2.4.1 following, including any payments to be made by it on the dates and times herein specified, the Company may, on thirty (30) days written notice by certified mail to the person designated by that Resp Org to receive such notices of noncompliance, discontinue service and/or suspend service to the noncomplying Resp Org at any time thereafter. In the case of discontinuance all applicable charges shall become due. If the Company does not suspend service on the date specified in the thirty (30) days notice, and the Resp Org's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue service and/or suspend service to the noncomplying Resp Org without further notice, including reports and testing support.

(B) Transfer of Responsibilities When a Resp Org's Service is Discontinued

- (1)** If a Resp Org is denied TFN Registry access, or of its own volition ceases providing Resp Org services, the Resp Org is responsible for notifying its toll-free subscribers that it will no longer provide those services and that the toll-free subscribers must choose a new Resp Org within fifteen (15) business days. The Resp Org must provide written proof to the Company of such notification.
- (2)** If a Resp Org is suddenly unable to continue functioning as a Resp Org, the Resp Org must provide the Company with sufficient toll-free subscriber account information to allow for subscriber notification of the requirement to choose a new Resp Org within fifteen (15) business days.
- (3)** If a subscriber is required to choose a new Resp Org, as set forth in (1) or (2) preceding, and fails to do so within fifteen (15) business days, the subscriber's account will be reassigned as set forth in (C) following.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.8 Suspension and Discontinuance of Service (Cont'd)

(C) Transfer of Toll-free Subscriber Accounts to Other Resp Orgs

The Company will work with the disconnected Resp Org, as well as the impacted subscribers, if known, and other Resp Orgs, to transfer impacted subscriber accounts to functioning Resp Orgs. The Company will take steps to minimize subscriber disruption and provide support for subscribers as they select replacement Resp Orgs. Requests to the Help Desk to transfer a TFN from a disconnected Resp Org to a new Resp Org must contain: 1) a letter of agency from the impacted subscriber designating the new Resp Org as its agent; and, 2) a copy of a bill for that subscriber and that TFN dated within 90 days prior to the date the subscriber's previous Resp Org was disconnected from the TFN Registry.

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If after a reasonable time period, no subscriber has been identified as being associated with a particular Toll Free number, the number will transition to spare status following the normal TFN Registry procedures and timeframes.

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2.2 Use

2.2.1 Limitations on Use

The Resp Org will not perform any functions using the TFN Registry which are not expressly provided for under this tariff, nor will the Resp Org access data contained in the TFN Registry which belongs to any other entity. Notwithstanding Section 2.1.8 (A), any violation of this paragraph may result in immediate termination of service by the Company.

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2.2.2 Unlawful Use

The services provided under this tariff may not be used for any unlawful purpose.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.2 Use (Cont'd)****2.2.2 Unlawful Use (Cont'd)**

The Federal Communications Commission has directed that the following language be included in this tariff:

(A) (1) [T]he Federal Communications Commission ("FCC") has concluded that warehousing, which the FCC defines as Responsible Organizations, either directly or indirectly through an affiliate, reserving toll free numbers from the SMS database without having an identified toll free subscriber for whom those numbers are being reserved, is an unreasonable practice under Section 201(b) of the Communications Act and is inconsistent with the FCC's obligation under Section 251(e)(1) of the Communications Act to ensure that numbers are made available on an equitable basis; and (2) if a Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the database, or if a Responsible Organization does not have an identified, billed toll free subscriber before switching a number from reserved or assigned to working status, then there is a rebuttable presumption that the Responsible Organization is warehousing numbers. Responsible Organizations that warehouse numbers will be subject to penalties.

(B) The Federal Communications Commission ("FCC") has concluded that hoarding, defined as the acquisition of more toll free numbers than one intends to use for the provision of toll free service, as well as the sale of a toll free number by a private entity for a fee, is contrary to the public interest in the conservation of the scarce toll free number resource and contrary to the FCC's responsibility to promote the orderly use and allocation of toll free numbers.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.2 Use (Cont'd)****2.2.3 Limitation on Resource Use**

The Company reserves the right to discontinue access for Resp Orgs who utilize an inappropriate proportion of TFN Registry Central Processing Unit (CPU) capacity, and who, after notification of such usage by the Company, continue to perform the actions which result in the excessive use of CPU capacity. For the purposes of this Section, any Resp Org that utilizes a proportion of the TFN Registry's CPU capacity that is more than: (a) 2.5 times that Resp Org's proportion of the total WORKING Toll Free numbers, or (b) 5% of the TFN Registry's CPU capacity, whichever is larger, will be considered to be using an inappropriate proportion of TFN Registry CPU capacity. For Example:

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- If a Resp Org has 20% of the WORKING numbers, they may use up to 50% (2.5 x 20%) of the TFN Registry CPU capacity.
- If a Resp Org has 1% of the WORKING numbers, they may use up to 5% of the CPU capacity. (2.5 x 1% is less than the 5% minimum)

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If a Resp Org is found to be using an inappropriate proportion of TFN Registry CPU capacity, that Resp Org will be notified via certified mail that it is in violation of this tariff and must reduce its utilization of TFN Registry CPU capacity immediately on receipt. Subsequently, the Resp Org must provide the Company with written agreement to permanently reduce its level of TFN Registry CPU capacity utilization within fourteen (14) days of the date of receipt. If the Resp Org does not reduce its utilization and provide the required written agreement, that Resp Org's access to the TFN Registry will be discontinued and the Resp Org will be notified via certified mail of the disconnection.

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If the disconnected Resp Org provides the Company with written assurances that the use of an inappropriate level of TFN Registry CPU capacity will not occur in the future, access to the TFN Registry will be restored, and a fee equivalent to fifty percent (50%) of the charge for Service Establishment – First Logon ID (Section 4.2 [A]) will be assessed.

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In the event that the same Resp Org is disconnected more than once for using an inappropriate proportion of TFN Registry CPU capacity, that Resp Org will not be allowed access to the TFN Registry for a period of ninety (90) days and a reconnection charge equal to the charge for Service Establishment – First Logon ID will be assessed.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.2 Use (Cont'd)****2.2.4 FCC Fees**

The Federal Communications Commission has directed that the following language be included in this tariff:

The Federal Communications Commission (FCC) has adopted a regulatory fee category for toll free numbers, assessed for each toll free number managed by a Responsible Organization (Resp Org). This regulatory fee, assessed on RespOrgs for toll free numbers managed by a Resp Org, is payable for all toll free numbers unless calls from only other countries can be completed using those toll free numbers. A Resp Org that fails to pay the regulatory fee assessed by the FCC will be subject to penalties.

2.2.5 FCC Coordination

Pursuant to the FCC's Notice of Proposed Rulemaking, Report and Order, and Order, Assessment and Collection of Regulatory Fees for Fiscal Year 2015; Amendment of Part 1 of the Commission's Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014, MD Docket Nos. 15-121, 14-92, FCC 15-59 (rel. May 21, 2015), the Company will provide information necessary for the FCC to implement and assess fees.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.3 Obligations/Responsibilities of the Resp Org**

The Resp Org is the entity identified by the toll-free subscriber or the subscriber's agent that manages and administers the appropriate records in the TFN Registry. Functions provided include data entry, record change and trouble acceptance, referral, and/or clearance.

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2.3.1 General Responsibilities

The Resp Org is responsible to its subscribers for the overall coordination to provision, maintain and test toll-free Service between various entities, including Local Exchange Carriers (LECs) and Interexchange Carriers (ICs).

In general, the Resp Org is responsible to:

- Identify and inform its subscribers of the specific responsibilities that it, as a Resp Org, has accepted.
- Initiate and change a toll-free customer record in TFN Registry based on information provided by the subscriber and/or their service provider(s). At the subscriber's request, these changes must be made at the earliest possible date.
- Notify the subscriber that when multiple LECs and/or ICs will be used to carry traffic for a specific toll-free number, the subscriber must inform all involved service providers of the changes it has directed the Resp Org to make. Further notification may be required when changes are made which could affect LEC and/or IC traffic loads.
- Ensure subscriber or its designee has engaged a LEC or IC to which traffic for a specific toll-free number will be routed.
- Treat all subscriber information as confidential unless otherwise instructed by the subscriber.

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Further guidelines are defined following.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.3 Obligations/Responsibilities of the Resp Org (Cont'd)

2.3.1 General Responsibilities (Cont'd)

(A) Toll-free Number Administration

(1) Toll-free numbers are obtained by Resp Orgs for subscribers from a common pool of available numbers. Toll-free Service numbers are not to be treated as commodities which can be bought or sold and no individual or entity is granted a proprietary interest in any toll-free service number assigned.

(2) Specific toll-free number requests are honored based upon availability, on a first-come first-served basis, at the time the reservation request is received in the Reservation Queue or load balancer by the TFN Registry.

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(3) A specific toll-free number may be reserved for a maximum of 45 calendar days on behalf of a subscriber. However, if a toll-free number order to activate the reserved toll-free number is not placed prior to the end of the number reservation period, the toll-free number status will change to Spare. This process supports the need to make toll-free numbers available for use by all toll-free service providers and subscribers.

(4) Each Resp Org can have up to 2000 numbers reserved, or 7.5 percent of its total quantity of working numbers, whichever is greater.

(5) Certain toll-free NXX codes are "not open" for line number assignment in the United States because of specific toll-free service applications outside the U.S., but within the North American Numbering Plan. In addition, certain toll-free NXX codes are reserved for special applications (e.g., the hearing impaired 800-855) and are not open for general assignment. These NXXs will remain in a closed status in TFN Registry. The Company will make individual line number assignments to subscribers based on NANP guidelines for these specialized services.

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(6) Each Resp Org can have a maximum of 3% of the quantity of available numbers reserved at any given time.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.3 Obligations/Responsibilities of the Resp Org (Cont'd)

2.3.1 General Responsibilities (Cont'd)

(A) Toll-free Number Administration (Cont'd)

- (7) An individual toll-free number can be assigned to only one subscriber. No individual or entity (e.g., subscriber, service provider) has a proprietary interest in any given toll-free number; however, subscribers do have a controlling interest in their active numbers.
- (8) Pursuant to FCC rules, all entities, (e.g., Resp Orgs, subscribers, service providers), are prohibited from selling, brokering, bartering, and releasing for a fee (or otherwise) any toll-free number. N
- (9) Toll-free subscribers may retain the use of their number assignments, even following changes in their toll-free Service Providers and/or Resp Org.

(B) Trouble Reporting Responsibilities

The Resp Org is responsible for the overall coordination of maintenance and testing of the end-to-end toll-free service. In addition the Resp Org will:

- Provide a contact telephone number for referrals of toll-free troubles on a 24 hours a day, 7 days a week basis.
- Provide trained personnel to interface with subscribers, end users, LECs, ICs, the Company and TFN Registry. T
- Accept trouble reports from toll-free subscribers, casual end users or other parties receiving trouble reports on toll-free services for which they are the Resp Org.
- Work with the involved service providers to determine whose facilities have caused the trouble report to be generated.
- If necessary, test cooperatively with service providers to further identify and clear a trouble once it has been sectionalized.

TFN REGISTRY FUNCTIONS

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**2. General Regulations
(Cont'd)****2.3 Obligations/Responsibilities of the Resp Org (Cont'd)****2.3.1 General Responsibilities (Cont'd)****(B) Trouble Reporting Responsibilities (Cont'd)**

- Advise the toll-free subscriber and affected LECs and ICs of the status of trouble clearance.

(C) Resp Org Changes

When a toll-free subscriber requests a change of Resp Org:

- (1) The current Resp Org will release the toll-free subscriber's TFN Registry records to the receiving (new) Resp Org within two (2) days of the receipt of the request unless the releasing (current) and receiving (new) Resp Orgs negotiate a different release date. Upon completion of the change, the receiving Resp Org will notify the toll-free subscriber that the change has been made.
- (2) As described in 3.6.2 following, when the receiving Resp Org requests the Company to make the change, upon written request from the receiving Resp Org, which certifies that it has the required authorization of the subscriber, the Company will change an TFN Registry number record to reflect the receiving Resp Org as the Resp Org for that toll-free number.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.3 Obligations/Responsibilities of the Resp Org (Cont'd)****2.3.2 Service Establishment**

- (A) In order to access the TFN Registry, the Resp Org must first obtain a logon identification (logon ID) code from the Company. In order to obtain a logon ID, the Resp Org must demonstrate that one or more Resp Org employees have been adequately trained in TFN Registry system capabilities and features, including handling customer records, number administration and service provisioning. Requests for logon IDs should be made via the Service Establishment form, which is available on the Somos website, <http://www.somos.com>.

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Regardless of the method used for obtaining the necessary knowledge, in all cases the TFN Registry training manager will prepare, schedule, and administer a certification test that the prospective Resp Org must pass.

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Subsequent to becoming certified by passing the certification test, the Resp Org is expected to use the Somos website to stay informed about the TFN Registry system.

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Failure to pass the certification test will result in the following:

- (1) Any applicant that fails the certification test will be required to wait a period of at least one week before requesting that the test be repeated.
- (2) Any applicant that fails three (3) certification tests will have its application for access to the TFN Registry canceled.
- (3) After three (3) failures of the certification test, a period of at least six (6) months must elapse between the time the applicant is notified that their application has been canceled and the time the applicant re-applies. Such subsequent applications will be treated as first-time applications.

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Resp Orgs interfacing with the TFN Registry on a mechanized basis are required to participate in a series of tests as described in 3.5 following prior to interfacing with the TFN Registry on a mechanized basis.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.3 Obligations/Responsibilities of the Resp Org (Cont'd)****2.3.2 Service Establishment (Cont'd)**

Access to the TFN Registry will not be granted to individuals requesting access if that individual is known to have either been convicted of a felony within the past 5 years or has incurred an adverse judgment rendered for the wrongful disclosure of proprietary information. Resp Org status can be revoked at any time if the Resp Org is found to have been involved in felonious activities. Violations of proprietary information standards shall be considered justification for revocation of access for the purposes of enforcing this provision.

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Before a logon ID is assigned by the Company, the customer/Resp Org must provide the following information:

- Resp Org Name
- Resp Org billing Address within the United States, Canada, or other NANP country/territory
- Resp Org contact name and telephone number within the United States, Canada, or other NANP country/territory (i.e., the only individual that future orders can be accepted from unless this responsibility is subsequently assigned to someone else and the Company is so notified in writing).
- Resp Org first point of contact name and telephone number within the United States, Canada, or other NANP country/territory for trouble reporting and resolution
- Resp Org contact names, telephone numbers and email addresses for primary and alternate billing contacts within the United States, Canada, or other NANP country/territory, i.e., those individuals responsible for retrieving and paying Somos invoices
- Type of Resp Org access to TFN Registry (i.e., non-dedicated, dedicated terminal, or dedicated mechanized)
- Access link speed for dedicated links
- Name of Interexchange Carrier (IC) providing the connection
- IC circuit number and service order number
- Circuit installation due date
- For non-dedicated users, the challenge and response token supported by TFN Registry and the seeding information (as further described in 2.7 and 3.3.1 (B)), following
- Permission class(es) to be associated with each logon ID

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.3 Obligations/Responsibilities of the Resp Org (Cont'd)****2.3.2 Service Establishment (Cont'd)****(B) Assignment of Logon IDs and Passwords**

When the required information has been received, the requested logon IDs will be assigned by the Company. At the time the logon ID is assigned, the Company will establish a temporary password to be associated with the ID. The first time the Resp Org uses the logon ID to access the TFN Registry, the temporary password must be changed to one selected by the Resp Org. Mechanized Generic Interface access does not use a password.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.3 Obligations/Responsibilities of the Resp Org

2.3.3 Representations and Warranties of the Resp Org

- (A) The Resp Org warrants that it has the right to provide to the Company all information, specifications, and data which it furnishes to the Company under the terms of this tariff.
- (B) The Resp Org warrants that possession and use by the Company of the information which the Resp Org furnishes to the Company under this tariff does not constitute an infringement upon any patent, copyright, trade secret, or other intellectual property right of any third party.

2.3.4 Claims and Demands for Damages

- (A) The Resp Org shall defend, indemnify and save harmless the Company from and against any suits, claims, losses or damages, including punitive damages, attorney fees and court costs by the Resp Org or third parties resulting from the neglect or willful misconduct of the Resp Org.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.3 Obligations/Responsibilities of the Resp Org (Cont'd)

2.3.4 Claims and Demands for Damages (Cont'd)

- (B) With respect to claims of patent infringement made by third persons, the Resp Org shall defend, indemnify, protect and save harmless the Company from and against all claims arising out of the combining with, or use in connection with, the services provided under this tariff, any circuit, apparatus, system or method provided by the Resp Org.
- (C) The Resp Org shall defend, indemnify, protect and save harmless the Company from and against any and all suits, claims, and demands by third persons arising out of the construction, installation, operation, maintenance, or removal of the Resp Org's circuits, facilities, or equipment connected to the Company's services provided under this tariff, including, without limitation, Workmen's Compensation claims actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the Resp Org's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the Resp Org to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate the services provided under this tariff.
- (D) The Resp Org shall defend, indemnify and save harmless the Company from and against any suits, claims, losses or damages, including punitive damages, attorney fees and court costs by the Resp Org or third parties arising out of any act or omission of the Resp Org in the course of using services provided under this tariff.

2.3.5 System Security

Resp Orgs will adhere to the following:

- (A) Resp Orgs may access TFN Registry only to the extent required by and incident to the administration and management of their toll-free subscriber's telecommunications services. T
- (B) Resp Orgs may not disclose or use information which may be learned as a consequence of access to TFN Registry except as may be directly required to insure the proper operation of the subscriber's telecommunications service. Resp Orgs must take all reasonable precautions to prevent any other person or entity who does not have a need to know from acquiring such information. T

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.3 Obligations/Responsibilities of the Resp Org (Cont'd)****2.3.5 System Security (Cont'd)**

- (C) Resp Orgs shall take reasonable precautions to avoid disclosure, in whole or in part, of TFN Registry documentation, any related material or any other confidential material except to those who have a need to know incident to the operation of their toll-free subscriber's telecommunications service. T
- (D) Resp Orgs shall take all reasonable precautions to maintain the confidentiality of TFN Registry information. Such precautions shall include the use of logon IDs and passwords known only to the Resp Org's individual authorized users and the Company (except that a portion of the logon ID is known to others for systems communications purposes). TFN Registry telephone numbers and non-dedicated access numbers assigned to the Resp Org by the Company, or any aspect of access and sign-on methodology shall not be posted or shared with others under any circumstances. Resp Orgs shall follow normal logoff procedures prior to leaving a terminal unattended. Resp Orgs should report any known or suspected attempt by others to obtain unauthorized access to TFN Registry. T
- (E) Access into TFN Registry beyond that authorized may result in suspension and/or discontinuance of service as set forth in 2.1.8 preceding and in civil and/or criminal penalties. T

2.3.6 Protection of TFN Registry Logon Identification Codes and Passwords

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The Resp Org will be responsible for protecting and limiting access to its TFN Registry logon ID password(s), and will be liable for all charges incurred from the use of its logon ID codes and/or password(s), unless such charges arise from the Company's breach of 2.1.1 (D)(2) preceding. T

Protection of logon ID password(s) requires that all passwords are changed at least every ninety (90) days. In the event the Resp Org suspects the compromise of the security of its logon ID password(s), the Resp Org should notify the Company within twenty-four (24) hours and may request new logon ID password(s). The Company shall effect such code(s) changes at no charge to the Resp Org within twenty-four (24) hours of the Resp Org's request thereof. N
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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.3 Obligations/Responsibilities of the Resp Org (Cont'd)

2.3.7 Additional Responsibilities of the Resp Org

- (A) The Resp Org is responsible for accessing the TFN Registry to reserve numbers, to construct and modify toll-free subscriber records and to schedule the date for downloading each record to the necessary databases. The Resp Org is solely responsible for the accuracy of this information, and for assuring that all required information is input or transmitted to the TFN Registry in the proper format as specified in BR 780-004-221, SMS/800 User Guide: 3270, BR 780-004-280, User Guide: Web Based Access (WBA), and in SR-4592, SMS/800 Mechanized Generic Interface (MGI) Specification. The Company may modify that format under the conditions set forth in 2.1.6(C) preceding. T
- (B) The Resp Org will provide and maintain the hardware needed for its interface with the TFN Registry. The hardware and link specifications for the TFN Registry are contained in 3.3 following. T
- (C) The Resp Org is responsible for assuring that its number search and number reservation activities are consistent with Section 2.2.2 of this tariff. T

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.4 Payment Arrangements and Credit Allowances****2.4.1 Payment Arrangements**

- (A) The Resp Org shall pay the Company for services rendered pursuant to this tariff in accordance with the schedule of rates and charges set forth in Section 4 following. The bill cycle will close on the fourteenth day of the month. On the tenth work day of the following month, a bill to the Resp Org for services rendered and charges incurred as set forth in (C) following will be made available by the Company at the Somos website, <http://www.somos.com>. Such bill will be based on the schedule of rates and charges and all other applicable provisions of this tariff. The customer shall pay to the Company, within thirty (30) days from the bill issue date, an amount equal to the amount of the bill in accordance with (G) following.

If such payment date would cause payment to be due on a Saturday, Sunday or Holiday (i.e., New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and a day when Martin Luther King Day, President's Day, Memorial Day, Columbus Day and Veteran's Day are legally observed), payment for such bills will be due from the customer as follows:

If such payment date falls on a Sunday or on a Holiday which is observed on a Monday, the payment date shall be the first non-Holiday day following such Sunday or Holiday. If such payment date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non-Holiday day preceding such Saturday or Holiday.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment Arrangements (Cont'd)

- (B) The Company will, in order to safeguard its interest, require a Resp Org which has a proven history of late payments to the Company, or does not have established credit, or has filed for bankruptcy, or has been suspended or disconnected for non-payment, to make a deposit prior to or at any time after the provision of a service to the Resp Org to be held by the Company as a guarantee of the payment of rates and charges. In addition, Company will require a deposit for any such Resp Org that has a \$4,000 or more increase in its monthly bill over any 2 month period of time.

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For the purposes of this section, a proven history of late payments is defined as two (2) or more occasions within the preceding twelve (12) months in which payment for undisputed charges was not received within three (3) business days following the payment due date, provided the outstanding undisputed amount of each such individual unpaid bill represented at least ten (10) percent of the total charges on that individual bill.

No such deposit will be required of a Resp Org which is a successor of a company which has established credit and has no history of late payments to the Company unless this successor is one with a proven history of late payments to the Company or which does not have established credit. Such deposit may not exceed the actual or estimated rates and charges for the service for a two-month period. For a Resp Org with no established record of service with the Company, the estimated charges for a two-month period will be \$4,000. The fact that a deposit has been made in no way relieves the Resp Org from complying with the Company's regulations as to the prompt payment of bills.

Such a deposit will be refunded or credited to the account when the Resp Org has established a one-year prompt payment record at any time prior to the termination of the provision of the service to the Resp Org. At such time as the provision of the service to the Resp Org is terminated, the amount of the deposit will be credited to the Resp Org's account and any credit balance which may remain will be refunded, unless the deposit has previously been refunded or credited to the Resp Org's account as specified preceding. The company reserves the right to apply a Resp Org's deposit to any balance past due by more than 60 days. Should the company apply a Resp Org's deposit to a balance past due, the Resp Org must replenish its deposit within 30 days pursuant to this section.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.4 Payment Arrangements and Credit Allowances (Cont'd)****2.4.1 Payment Arrangements (Cont'd)**

In case of a cash deposit, for the period the deposit is held by the Company, the Resp Org will receive interest at the same percentage rate as that set forth in (D) following. Simple interest will be applied for the number of days from the date the Resp Org deposit is received by the Company to and including the date such deposit is credited to the Resp Org's account or the date the deposit is refunded by the Company. Should a deposit be credited to the Resp Org's account, as indicated above, no interest will accrue on the deposit from the date such deposit is credited to the Resp Org's account.

TFN REGISTRY FUNCTIONS

T

2. General Regulations (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment Arrangements (Cont'd)

- (C) The Company shall bill on a current basis all charges incurred by and credits due the Resp Org under this tariff attributable to services established or discontinued during the preceding billing period.

Resp Org bills will be available on the tenth work day of the month. Work days are considered to be Monday through Friday, excluding holidays or holiday observance days. In case of a holiday or holiday observance, the bill availability date shall be the first non-holiday or non-holiday observance day following such holiday or holiday observance. The actual holidays which can affect the bill availability date are set forth in 2.4.1(A) preceding.

- (D) Payments to the Company provided for in this tariff shall, when overdue, be subjected to a late payment charge calculated at an annual rate of twelve percent (12%), applied as simple interest, following the payment due date. If the amount of such interest charge exceeds the maximum permitted by law for such charge, the interest charge shall be reduced to such maximum amount.

All billing inquiries and disputes should be forwarded, in writing, to:
Somos, Inc. Billing Coordinator
Post Office Box 8122
Bridgewater, NJ 08807-8122

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment Arrangements (Cont'd)

- (E) Payment to the Company shall be made (a) via wire transfer (Fedwire) or Automated Clearing House (ACH) payments to the following account:

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JP Morgan Chase
ABA # 021000021
Account #: 672583965

or (b) by check, appropriately dated and drawn payable to the order of Somos, Inc., which check shall be directed as follows:

Somos, Inc.
28287 Network Place
Chicago, IL 60673-1282

or (c) by credit card, with information entered on the Somos website;

or (d) in such other manner as may be approved by both parties in writing.

- (F) In the event of the lack of adequate computer information at the time of scheduled bill preparation, the billing for the services for which data was unavailable shall be made available as soon as reasonably possible thereafter, and shall include auditable backup detail, and will be made available based on incurred costs at the rates in effect when the service was rendered. All bills will be payable by the customer in accordance with paragraphs (A) through (E) preceding.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment Arrangements (Cont'd)

- (G) In case of disputes regarding billing prepared by the Company, the Resp Org shall pay the undisputed amount in accordance with the provisions of (D) preceding and shall immediately thereafter negotiate in good faith with the Company a resolution of the amount in dispute. When the dispute is resolved, the Resp Org or the Company, whichever is applicable shall pay to the other the amount determined to be properly due and owing, together with interest from the original date. Such interest shall be calculated in the manner specified in (D) preceding. T
- (H) For purposes of administering this tariff, all months are assumed to have 30 days. Adjustments for the quantities of services established or discontinued in any billing period beyond the minimum period set forth for services in other sections of this tariff will be prorated to the number of days or major fraction of days based on a 30 day month. Unless specified otherwise, "day" refers to calendar day. T
- (I) The Company will, upon request and if available, furnish such detailed information as may reasonably be required for verification of any bill. T

2.4.2 Credit Allowance for Service Interruption

(A) General

A service is interrupted when it becomes unusable to the Resp Org. For purposes of this tariff, service interruptions shall be considered to be those instances where the Resp Org is unable to access the TFN Registry during a continuous three hour period, except for those periods of scheduled downtime as specified in 2.1.6 preceding, provided such failure to access is caused by the TFN Registry and not the data links connecting the Resp Org to the TFN Registry. T
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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.4 Payment Arrangements and Credit Allowances (Cont'd)****2.4.2 Credit Allowance for Service Interruption (Cont'd)****(B) Application of the Credit Allowance**

After the TFN Registry has been inaccessible for a period of three hours or more (except as specified in (A) preceding), a credit allowance shall be granted at the rate of 1/720 of the monthly rates for the following rate elements:

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- TFN Registry Access
- Customer Record Administration

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The credit allowance shall be granted for each hour or major fraction thereof of the total period that the interruption occurs.

(C) Limitations on the Credit Allowance for TFN Registry Access

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The TFN Registry Access, the credit allowance for an interruption or series of interruptions shall not exceed the sum of the monthly rates for the rate elements specified in (B) preceding.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.5 TFN Registry Security Features**

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2.5.1 General

User accessibility and interface capability are administered by the Company through the assignment of logon identification codes and passwords. Logon identification codes are based on a combination of user classes and security groupings which are associated with each user's responsibilities/job functions.

In general, the TFN Registry security enables the Resp Org to select the appropriate user class to ensure that only authorized users can access specific data. This is accomplished through the establishment of different permissions for different user groups.

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2.5.2 TFN Registry Environment

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The TFN Registry database application operates within information management software environments on TFN Registry system. User access to the TFN Registry can be accomplished via a non-dedicated connection, such as the Internet, or a dedicated connection. Access to some interfaces requires a dedicated connection.

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These connections serve as the first tier of a three-tier security system.

(A) Tier 1 Security – Network Access to TFN Registry

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(1) Dedicated Access Peripherals

TFN Registry dedicated access utilizes private, non-public connections between end user and the TFN Registry application.

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(2) Non-Dedicated Access Peripherals

TFN Registry non-dedicated access via the public Internet uses a personal computer (PC) and Security Key. An online security system permits access to TFN Registry only to Security Keys defined in its database.

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Non-dedicated access to the TFN Registry GUI & API Interfaces permits a Resp Org to connect to the TFN Registry directly via the public Internet without the use of a Security Key by utilizing a UserID and password.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)**2.5 TFN Registry Security Features (Cont'd)**

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2.5.2 TFN Registry Environment (Cont'd)

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(B) Tier 2 Security -TFN Registry Application Access

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TFN Registry application access is independent of an end user's network access. TFN Registry application logons and passwords must be requested from and created by the Company. Each request for TFN Registry application access must be approved and signed by a predetermined, authorized individual of the Resp Org.

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The password is independently controlled by the Resp Org and must be changed periodically. Failed logon attempts above a certain threshold will cause the system to revoke a logon ID. The logon ID may be restored by contacting the Company.

(C) Tier 3 Security - TFN Registry User Group Permissions

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User group permissions are defined by the Resp Org to match a specific user's needs. A user group can consist of multiple user classes. As such, each user group's access to the TFN Registry application is limited to a specified set of functionalities.

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2.6 Proprietary Information**2.6.1 General**

- (A)** Without limiting the generality of Proprietary Information as defined in 2.7 following, the Company's Proprietary Information shall extend to cover all data regarding the operation of the TFN Registry, the interfaces that permit the Resp Org to connect to and use the TFN Registry, all of the Company's supporting software systems used in conjunction with the Company's provision of the services specified in this tariff and information displayed on all TFN Registry computer screens accessed by the Resp Org, except to the extent specifically excluded below.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.6 Proprietary Information (Cont'd)

2.6.1 General (Cont'd)

- (B) Without limiting the generality of Proprietary Information, as defined in 2.7 following, the Resp Org's Proprietary Information includes the Resp Orgs' TFN Registry logon identification code(s) as well as individual and compiled listings of the Resp Org's customers, their call processing record(s) information and any other related information insofar as such information is capable of being displayed in tabular (or the electronic equivalent thereof) form, but the Company is granted a limited license to disclose Resp Org Proprietary Information to the extent that it is necessary for the provision of toll-free service to the Resp Org(s), including without limitation, the population of the TFN Registry database, the downloading (and updating) of this information to SCPs, and the disclosure of such information to the specific toll-free Resp Org(s) to which such information corresponds. T
- (C) Information shall be considered Proprietary Information unless and only to the extent that the Receiving Party can demonstrate that such information: T
- (1) was or becomes available to the public through no breach of this tariff;
 - (2) was previously known by the Receiving Party without any restrictions on its use and disclosure;
 - (3) is received from a third party free to disclose such information without restriction;
 - (4) is independently developed by the Receiving Party without the use of Proprietary Information of the Disclosing Party; or
 - (5) is approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization.

Proprietary Information shall not include any 800 number, the status of any 800 number, the name of the entity which is the Resp Org for any 800 number and the Resp Org's trouble referral number.

- (D) With respect to Proprietary Information, the Receiving Party shall:

- (1) use the Proprietary Information only for the purpose(s) set forth in this tariff;

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.6 Proprietary Information

2.6.1 General (Cont'd)

(D) (Cont'd)

- (2) restrict disclosure of the Proprietary Information solely to those employees of the Receiving Party and its affiliates and contractors with a "need to know" who are subject to a confidentiality agreement with the "Receiving Party", and not disclose it to any other person or entity without the prior written consent of the Disclosing Party. The confidentiality agreement must limit the use of the Proprietary Information to those activities necessary to complete tasks listed in this tariff and it must contain terms and conditions that will provide the same level of confidentiality as those contained herein. The Resp Org will have access to the confidentiality agreement between the Company and the affiliates and contractors to assure that it provides adequate protection of the Resp Org's Proprietary Information. All of the Resp Org's agreements with affiliates and/or contractors shall contain a provision whereby each Resp Org acknowledges that the TFN Registry contains Proprietary Information of the Company;
- (3) advise those employees, in writing, who gain access to Proprietary Information of their obligations with respect to the Proprietary Information;
- (4) make only the number of copies of the Proprietary Information necessary to disseminate the information to those employees who are entitled to have access to it, and ensure that all confidentiality notices set forth on the Proprietary Information are reproduced in full on such copies;
- (5) safeguard the Proprietary Information with the same degree of care to avoid unauthorized disclosure as recipient uses to protect its own similar confidential and proprietary information;
- (6) disclose the Proprietary information if required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure; provided however, that the Receiving Party shall first notify the Disclosing Party ten (10) days prior to the impending disclosure, or as soon as possible if the Receiving Party has less time to respond; and

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.6 Proprietary Information (Cont'd)

2.6.1 General (Cont'd)

(D) (Cont'd)

- (7) disclose Proprietary Information in response to a valid order of a court or other government body of the United States or any political subdivisions thereof, but only to the extent of and for the purposes of such required disclosure; provided, however, that the Receiving Party shall first notify the Disclosing Party of the requirement and permit the Disclosing Party to seek an appropriate protective order.

The Company and the Resp Org agree that an impending or existing violation of any provision of Section 2.6 of this tariff would cause irreparable injury for which there would be no adequate remedy at law, and that the harmed party shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

- (E) Exceptions. Nothing in this section prohibits Company from using, disclosing, or permitting access to proprietary information obtained from Resp Orgs to protect users of those services and Resp Orgs, interexchange carriers, or local exchange carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

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TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.7 Definitions.

Application Program Interface (API): A software intermediary that allows two computer applications to communicate with each other.

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Area of Service (AOS): The geographical area from which a toll-free subscriber can receive calls dialed to its toll-free number.

Call Processing: The sequence of operations performed by a telephone switching system from the time a call is dialed through delivering it to its terminating location.

Centralized Resp Org Change (ROC) Management System: Enables Resp Orgs to administer Toll-Free Number Resp Org Changes and store the associated Letter of Agency (LOA) along with supporting documentation in a centralized location. This system standardizes the process of Resp Org Change management, submission and processing of the change requests as well as provides access to the history of the change transactions and supporting documentation.

Exchange: A unit generally smaller than a Local Access and Transport Area, established by the telephone company for the administration of communications service in a specified area which usually embraces a city, town, or village and its environs. It consists of one or more central offices together with the associated facilities used in furnishing communications service within that area. One or more designated exchanges comprise a given Local Access and Transport Area.

Exchange Access: The provision of local network facilities by local exchange carriers for the purpose of originating or terminating interexchange telecommunications.

Graphical User Interface (GUI): A Graphical User Interface is a computer interface that allows users to interact with a device through graphical elements such as pictures and animations, as opposed to text-based commands.

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Interexchange Carrier (IC): Any common carrier authorized by the FCC and/or a state public utility commission to provide interexchange telecommunications.

Local Access and Transport Area (LATA): The geographic regions within which a local telephone company can offer exchange access services.

Local Exchange: The telephone exchange in which a group of subscriber's lines terminate and where those lines have access to other local exchanges and interexchange carrier networks, also known as an end office or local telephone office.

Local Exchange Carrier (LEC): A local telephone company that provides exchange access services.

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.7 Definitions (Cont'd)

Mechanized Generic Interface (MGI): A machine-to-machine interface that supports Resp Orgs that have their own MGI client application to perform a subset of TFN Registry functions (including core functions of searching and reserving toll-free numbers and creating/updating Customer Records (CRs) for toll-free numbers).

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North American Numbering Plan (NANP): The system for assigning 10-digit telephone numbers in North America where the first three numbers represent an area code, the second three a Local Exchange within that area, and the final four digits a particular subscriber's line within the Exchange. NANP is the basic numbering scheme for the telecommunications networks located in American Samoa, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands).

Numbering Plan Area (NPA): In the U.S., a nationwide numbering program for accessing telephone service in geographical regions by area codes.

Proprietary Information: Any information or data of a party which is disclosed by that party (the "Disclosing Party") to the other party (the "Receiving Party") under or in contemplation of this tariff and which if in tangible form or other media that can be converted to readable form, is clearly marked as confidential or proprietary when disclosed; or if oral or visual, is identified as confidential or proprietary on disclosure and is summarized in a writing so marked and delivered within ten (10) days following such disclosure.

Responsible Organization (Resp Org): The entity that has total responsibility for the account management of a particular toll-free number, including maintaining its customer record in the TFN Registry system. Also, the entity to which logon IDs are assigned. An entity which accesses the TFN Registry to (a) search for and reserve toll-free numbers and (b) create and maintain toll-free number customer records, including call processing records for Exchange and Exchange Access toll-free service.

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Service Control Points (SCP): The real-time data base systems in the toll-free service network that contain instructions on how subscribers wish their calls to be routed, terminated, or otherwise processed.

Certain material previously on this page now appears on Page 53
This page filed under Transmittal No. 4

TFN REGISTRY FUNCTIONS

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2. General Regulations (Cont'd)

2.7 Definitions (Cont'd)

Security Key: A mechanism to perform two-factor authentication for access to the TFN Registry system.

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SMS/800 Toll-free Number Registry (TFN Registry) (formerly SMS/800):

The main administrative support system of toll-free service. It is used to create and update subscriber toll-free records that are then downloaded to SCPs for handling subscriber's toll-free calls. The system is also used by Resp Orgs to reserve and assign toll-free numbers.

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Terminal: Any desktop device capable of sending or receiving information over a telecommunications channel; generally refers to a personal computer or an executive work station.

Toll-free Number Administration: The process of assigning, reserving, and releasing toll-free telephone numbers for public use.

Toll-free Number Search and Reservation: The process of searching the TFN Registry data base to obtain and reserve available toll-free numbers for subscribers.

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Toll-free Service Provider: A telecommunications company that offers toll-free services to subscribers; A toll-free Service Provider may be an Interexchange Carrier or a Local Exchange Carrier.

Toll-free Service Provisioning: The process of entering a new toll-free subscriber record into the TFN Registry data base; also deleting or updating any such existing record.

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Toll-free Subscriber: Any individual, business, or government agency that has arranged with a LEC or an IC to have a toll-free service, and that has been assigned a toll-free number.

Web Services Interface (WSI): An access method for utilizing the Centralized ROC Management System which transports ROC-related data between a Resp Org's system and the TFN Registry system.

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Certain material on this page originally appeared on Page 52
This page filed under Transmittal No. 4

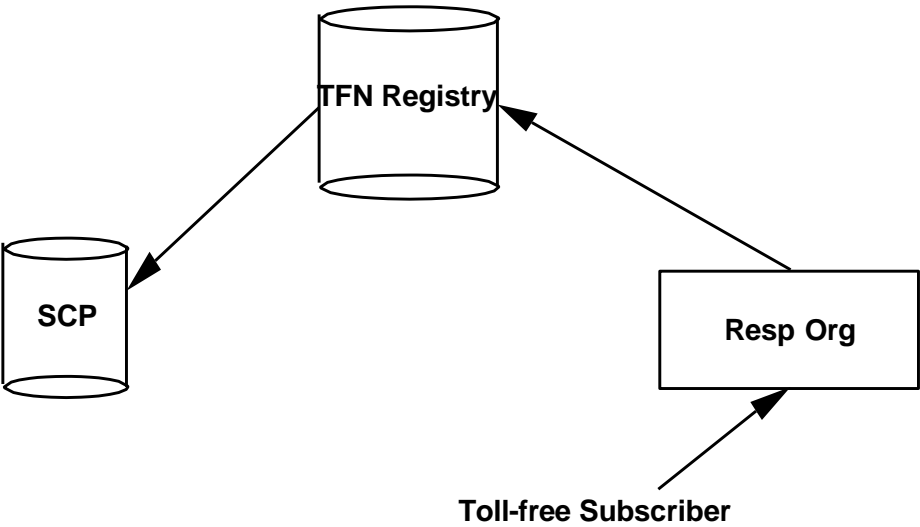
TFN Registry Functions T

3. Service Offerings

TFN Registry is a system which is used to update deployed databases. TFN Registry is the focal point for initial service provisioning and all subsequent changes to the toll-free subscriber's service. TFN Registry supports number administration, creation and modification of customer records. T

The following diagram depicts the activities associated with customer record creation and downloading to the databases.

TFN Registry
BASIC SYSTEM ARCHITECTURE T



- Legend T
- TFN Registry - Toll-Free Number Registry
 - Resp Org - Responsible Organization
 - SCP - Service Control Point

TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)**3.1 Service Available to Toll-free Resp Orgs****3.1.1 Number Search and Reservation**

The TFN Registry provides the Resp Org the ability to search for and reserve ten digit toll-free (NPA-NXX-XXXX) numbers that reside within the database. The results of the search are the current status of a specified number or a display of a spare number. Unless specific instructions are given by the Resp Org, the TFN Registry does a random selection of spare numbers. If the number is spare, the Resp Org can reserve that number for up to 45 calendar days.

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The status of a toll-free number can be changed by the Resp Org, or in limited cases by the Company. The status can also be changed automatically by the system, based on predetermined criteria contained in the toll-free subscriber's record.

Number statuses recognized by TFN Registry are defined in BR 780-004-221, SMS/800 User Guide: 3270.

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3.1.2 Customer Record Creation and Modification

The Resp Org will have the ability to create new and modify existing toll-free Customer Records in the TFN Registry and schedule the date and time that the records are to be activated at the affected databases. The TFN Registry will update network databases, consistent with the effective date and time stated on the Customer Record.

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The toll-free Customer Record contains all data relevant to a particular toll-free number, including:

- a unique toll-free number
- the date the toll-free Service activation or change is to become effective (Effective Date)
- the time the service becomes effective (Time)

TFN REGISTRY FUNCTIONS

T

3. Service Offerings (Cont'd)

3.1 Services Available to Toll-free Resp Orgs (Cont'd)

3.1.3 Request Reports

Various types of reports are available to the Resp Org. Reports are described in detail in BR 780-004-227, User Guide: 3270 Service Provider Reports, BR 780-004-282, User Guide: Web-Based Reporting System (WRS) and BR 780-004-280, User Guide: Web-Based Access (WBA).

- (A) On-line reports are available to specific user classes and can be selected for viewing or printing, depending on the report.
- (B) Various off-line reports are also available, including call sampling reports. Where available, the Company will design call sampling studies and reports in accordance with customer specified criteria, selected from criteria described in the documents referenced above.
- (C) Exception reports are generated by the TFN Registry whenever the TFN Registry is unsuccessful in its attempt to send a subscriber record to one or more SCPs.
- (D) All reports which are printed at a Company location and provided to the Resp Org will be sent via first class U.S. mail unless the Resp Org requests otherwise. If the Resp Org requests that the reports be sent on an expedited basis, the Company will comply with such request and will send the report via an overnight carrier, or electronically if requested and such electronic transmission of the report is feasible. The overnight carrier will be instructed to bill their shipping charges to the recipient of the expedited reports.

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TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)

3.2 Service Assistance Corrective Actions

As part of the service provided to Resp Orgs, the Company will provide assistance and/or take corrective actions, as necessary, 24 hours daily if the Resp Org experiences difficulty logging on to TFN Registry or performing number search and reservation functions or when the Resp Org cannot create or modify call processing records.

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If the Company is unable to solve a problem immediately, Company personnel will advise the Resp Org of the status of the problem at agreed-upon intervals until the problem is resolved or an alternative access arrangement is put into place, whichever occurs first.

3.3 TFN Registry Access

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Resp Orgs have the option of accessing the TFN Registry via a non-dedicated, or dedicated connection.

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Dedicated access allows a Resp Org to connect directly to the TFN Registry via a Resp Org secured communications link.

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Details pertaining to these communications links are set forth below. It is the responsibility of the Resp Org to secure and maintain the communications links.

Non-dedicated access permits a Resp Org to connect to the TFN Registry, via the public Internet by use of a Security Key for security purposes. Downloading of certain reports is possible with non-dedicated access.

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Non-dedicated access to the TFN Registry GUI & API Interfaces permits a Resp Org to connect to the TFN Registry directly via the public Internet without the use of a Security Key by utilizing a UserID and password.

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TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)**3.3 TFN Registry Access (Cont'd)**

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3.3.1 Non-Dedicated Access Requirements

Access via non-dedicated connections is accomplished with the use of a Security Key, as defined in 2.7 preceding. Security Keys will be provided by the Company upon request. Security Keys from other sources will not be added to the TFN Registry secure environment.

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Access via non-dedicated connections to the API and GUI TFN Registry interfaces is accomplished via public Internet using the TFN Registry URL.

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TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)**3.3 TFN Registry Access (Cont'd)**

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3.3.2 Dedicated Terminal Access Requirements

When connecting to the TFN Registry on a MGI or non-MGI dedicated basis, the Resp Org must provide certain information to the Company.

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Information to be provided is identified in UIS-SMS-201 TFN Registry Data Center Network Connectivity Guide, which can be obtained from the Somos website, <http://www.somos.com>, or by contacting the Company's Help Desk at 1-844-HEY-Somos (844-439-7666, Option 1).

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3.3.3 Mechanized Generic Interface (MGI) Access Requirements

The Resp Orgs may also elect to interface with the TFN Registry on a mechanized basis. The TFN Registry Mechanized Generic Interface (MGI) facilitates the transfer of number administration and customer record administration data between TFN Registry and other Operations Systems (OSs) belonging to the Resp Org in order to support the various operations functions performed by TFN Registry. The interface is a two-way interface in the sense that data will flow to and from an OS.

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The TFN Registry to OS interface consists of five protocol layers: (1) the physical layer; (2) the link layer; (3) the packet layer; (4) a User Application Layer (UAL); and (5) the User Program Layer (UPL). The physical, packet, and link layers comprise the Transport Service, which provides an error-free communication path for the transfer of data between sites. It relieves application layers of any concern about the way in which reliable data transfer is achieved. UAL provides the Application Service functionality, which performs the necessary high-level protocol functions not supplied by the Transport Service. The functionality includes request/reply correlation, site-to-site confirmation, message queuing, message priority, message segmentation, and system or link failure/recovery. The UPL is concerned with the specific application messages themselves.

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TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)**3.3 TFN Registry Access (Cont'd)**

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3.3.3 Mechanized Generic Interface (MGI) Access Requirements (Cont'd)

The MGI is described in detail in SR-4592, TFN Registry Mechanized Generic Interface (MGI) Specification.

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3.3.4 Web Service Interface (WSI) Access

Resp Orgs may elect to use the Web Service Interface (WSI) to access the Centralized ROC Management System. The WSI facilitates the use of the Centralized ROC Management System with methods such as search, submit, process, attach LOA and/or documents, and retrieve documents to Resp Org Change requests. The interface is a two-way interface in the sense that data will flow to and from the TFN Registry system.

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The WSI is described in detail in the ROC WSI Specification and ROC Notification Subscriber WSI Specification. Instructions on how to access the TFN Registry system using ROC are described in detail in the User Guide: Resp Org Change System

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3.3.5 TFN Registry API Interface

Resp Orgs may access the TFN Registry in a machine to machine manner by using the TFN Registry APIs. This access is available over the public Internet and the user will submit credentials (User ID and password) to authenticate themselves before a connection is established and access is allowed. Details for using the TFN Registry API interface is documented in SMS/800 Toll-Free Number Registry: API Overview.

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3.3.6 TFN Registry GUI Interface

Resp Orgs may access the TFN Registry via a web services GUI accessible via the public Internet using URL <https://tfnregistry.somos.com>. The user will submit credentials (user ID and password) to authenticate themselves and those credentials will be validated by the system before access is granted. Details for accessing the TFN Registry GUI are available in the SMS/800 Toll-Free Number Registry User Guide

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Certain material previously on this page now appears on Page 60.1
This page filed under Transmittal No. 4

TFN REGISTRY FUNCTIONS

3. Service Offerings (Cont'd)**3.4 Batch Update Process**

In addition to providing for toll-free record creation and modification through direct interaction with the TFN Registry, the Company also provides for record creation and modification via a batch update process.

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The batch update process allows the Resp Org to transmit information to create, modify or disconnect toll-free numbers electronically. It does not provide for number search and reservation functions.

Before a Resp Org can use the batch update process, an initial test format must be provided to the Company. A test will be performed per each format submitted to verify the electronic format and to ensure that the Resp Org's record updates are properly generated, acted upon and responded to. Specifications can be found in the document SR-5120, CR Batch Update and Response Specification. A charge will be assessed for this testing either on an hourly basis, as set forth in 4.2(F).

When the batch update method is used, the Resp Org will be assessed an additional charge, as set forth in 4.2(F) following.

Reports generated during the batch update process, along with Resp Org input, will be returned to the Resp Org.

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Certain material on this page originally appeared on Page 60
This page filed under Transmittal No. 4

TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)**3.5 Mechanized Generic Interface (MGI) Testing**

Before OS to TFN Registry total system integration, Mechanized Generic Interfaces (MGIs) must be tested thoroughly to confirm data communications integrity. Resp Orgs planning to use the MGI method of access must comply with specific laboratory and field testing requirements prior to being allowed to access the TFN Registry via an MGI. A unique testing logon ID will be assigned for such testing.

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3.5.1 Laboratory Test Requirements

The laboratory test consists of the following test phases: Telcordia Protocol Conformance Testing Facility (verify TCP/IP protocol stack connectivity); User Application Layer (UAL) Testing; User Program Layer (UPL) Testing; and Volume Testing. Detailed testing requirements are set forth in SR-4592 Addendum, TFN Registry MGI Industry Test Plan.

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Any MGI company which expands or enhances its use of MGI access must first complete laboratory testing of the additional functionality, consistent with the above documents.

3.5.2 Field Test Requirements

Field testing will be conducted on a one-on-one basis. Five types of field testing will be conducted. These are: Communications Protocol testing, User Application Layer (UAL) testing, User Programming Layer (UPL) testing, Volume testing and Line Failure/Outage testing. Detailed testing requirements are set forth in SR-4592 Addendum, TFN Registry MGI Industry Test Plan.

T

3.5.3 Test Duration

Initial MGI testing will take approximately four months. Requests for initial MGI testing must be received at least four months in advance of the proposed testing start date. Additional testing may be requested by the Resp Org, with advance notice. When testing is requested, charges will be assessed, on an hourly basis.

3.5.4 Technical References for Testing Requirements

MGI laboratory tests and field tests are described in detail in SR-4592 Addendum, TFN Registry MGI Industry Test Plan.

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TFN REGISTRY FUNCTIONS

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3. Service Offerings (Cont'd)

3.6 Change of Resp Org

3.6.1 Resp Org Change Using Centralized Resp Org Change Management System

Using the Centralized ROC Management System: The new Centralized Resp Org Management System will allow new (gaining) Resp Orgs to submit a Resp Org Change request to current (losing) Resp Org for one or more Toll-Free Numbers, respond to a change request from another Resp Org, and complete the change via two methods namely the Secure Website and Web Service Interface (WSI). The feature determines the current Resp Org and submits the request, Letter of Agency (LOA), and other documents to that Resp Org. Resp Orgs will be able to access the requests and the associated documentation for up to 7 years.

Letter of Agency (LOA) requirement – Resp Orgs will have the ability to attach the Letter of Agency (LOA) while submitting Resp Org Change Authorization Requests to another Resp Org for processing. Verifying and accepting LOAs with wet signatures, electronically signed (eSignatures) and/or Third Party Verification (TPV) method is the responsibility of the losing Resp Orgs.

Use of the centralized ROC Management System to initiate a ROC is mandatory for any Resp Org Change associated with a LOA.

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Certain material previously on this page now appears on page 63

Issued: February 5, 2018

Effective: February 20, 2018

President and CEO

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TFN REGISTRY FUNCTIONS

T

3. Service Offerings (Cont'd)**3.6 Change of Resp Org (Cont'd)****3.6.2 Change of Resp Org Performed by Company – Help Desk Escalation**

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Upon request from a receiving Resp Org, which certifies that it has the required authorization (letter of agency) of the subscriber and has submitted such authorization to the Company, the Company will change that portion of a toll-free number record which specifies the Resp Org for that toll-free number. No routing or other service data will be modified. For each change of Resp Org activated by the Company, the requesting party will be assessed the Resp Org Change Charge, as set forth in 4.2(F)(2) following.

With the exception where there is potential for subscriber loss of service, Resp Org changes requiring Help Desk escalation may only be initiated through the Centralized Resp Org Change Management System.

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Resp Org changes will be performed within two business days from the receipt of the request.

When the Company changes the Resp Org for a toll-free number and a discrepancy occurs, the subscriber and the Resp Orgs involved must resolve the discrepancy among themselves. If the discrepancy resolution requires that the Resp Org designation be corrected through the Company's Help Desk, the Resp Org agreeing to request the change must submit a new Resp Org change request and the Resp Org Change Charge will be billed to that Resp Org.

If a Resp Org change is required due to a Company error, the subscriber's Resp Org will be corrected at no additional charge.

3.7 Additional Copies of Monthly Bill for TFN Registry Services

T

Upon request from a Resp Org, the Company will provide an additional copy of its entire monthly bill for TFN Registry services in electronic form with the same level of detail contained in the original (first) copy of the bill at no additional charge. Resp Orgs must provide the Company with the name, email or physical address and telephone number of the person to whom it should be sent.

T

Certain material on this page previously appeared on page 62

Issued: February 5, 2018

Effective: February 20, 2018

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TFN REGISTRY FUNCTIONS

T

4. Schedule of Rates and Charges**4.1 Rate Regulations****4.1.1 Types of Rates and Charges**

There are three types of rates and charges that apply to TFN Registry functions: monthly recurring rates, per request rates and nonrecurring charges. The rates and charges are applied to the various rate elements as set forth in 4.1.2 following.

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(A) Monthly Rates

Monthly rates are flat recurring rates that apply each month or fraction thereof that a specific rate element is provided. For billing purposes, each month is considered to have thirty (30) days. Once the minimum service period requirements have been fulfilled, monthly rates are adjusted for disconnects (i.e., billing only for that portion of the month that service was provided).

(B) Per Request Rates

Per request rates apply only when a specific rate element is used. These rates are applied on a per request or transaction basis. Per request rates are accumulated over a monthly period and billed to the Resp Org in terms of the total number of requests.

(C) Nonrecurring Charges

Nonrecurring charges are one-time charges that apply for a specific activity that occurs. The types of nonrecurring charges that apply to services provided herein are Service Establishment Charges.

TFN REGISTRY FUNCTIONS

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4. Schedule of Rates and Charges (Cont'd)**4.1 Rate Regulations (Cont'd)****4.1.2 Rate Elements**

Following is a brief description of the rate elements applicable to services provided under this tariff.

(A) Service Establishment

Service Establishment charges apply for each TFN Registry logon ID assigned to a Resp Org. A nonrecurring charge will be assessed for each logon ID established, except when a new code is established subject to the provisions in 2.3.6 preceding. Different nonrecurring charges will apply for first and additional logon IDs established for the same Resp Org.

T

When the Company provides additional Security Keys for use with non-dedicated access, a separate additional nonrecurring charge will be assessed, for each Security Key defined. When company provides replacement Security Keys, separate additional nonrecurring charges will be assessed only when the replacement is for reasons other than expiration of the Security Key or a defective Security Key.

If a Resp Org's access to TFN Registry service is suspended pursuant to 2.1.8 preceding, access will be restored only after the Resp Org is in compliance with 2.1.8 and a non-recurring service restoration fee will be assessed. This charge does not apply to those companies whose TFN Registry service has been discontinued pursuant to 2.1.8. Those companies are required to reapply for new TFN Registry access and pay all fees associated with becoming a Resp Org.

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(B) TFN Registry Access

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Access to the TFN Registry can be via non-dedicated or dedicated connections. Dedicated access requires use of a dedicated port on the TFN Registry system on a full-time basis, other forms of access share ports and other access resources. The monthly recurring rate for non-dedicated access is charged per defined Security Key. The monthly recurring rate for dedicated access depends on whether the dedicated access is MGI or Non-MGI. Both forms of dedicated access are charged per port to the production TFN Registry data center and per port to the disaster recovery TFN Registry data center.

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TFN REGISTRY FUNCTIONS

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4. Schedule of Rates and Charges (Cont'd)

4.1 Rate Regulations (Cont'd)

4.1.2 Rate Elements (Cont'd)

(C) Customer Record Administration

The Customer Record Administration Charge applies for each toll-free number associated with a Resp Org. This includes reserved as well as active toll-free numbers.

This element provides for number search and reservation functions, as well as activation and modification of toll-free numbers. When toll-free numbers are activated or discontinued, or information for a toll-free number is changed in the TFN Registry, this element also provides for updating the appropriate databases.

T

As part of the Customer Record Administration function, the Resp Org may also request on-line reports. Reports which do not require the Company to create or print the report are provided as part of this function.

Exception reports as described in 3.1.3(C) preceding are generated by the TFN Registry and are provided to the Resp Org at no additional charge.

T

The Customer Record Administration Charge begins on the day after the Resp Org takes control of a toll-free number and ends when the Resp Org relinquishes control of the number or when the number's status is changed to unavailable by the Company for operational or administrative reasons.

(D) Resp Org Reports

On-line reports are routinely prepared and delivered to customers or are created by TFN Registry vendors using the TFN Registry Web Reporting System (WRS) and delivered to customers. The effort to produce the on-line reports is very consistent and requires a minimum of effort. Due to these factors and to maintain consistency and predictability for the customer, a "per report" charge is used.

T

Off-line reports are customized reports whose creation requires technical analysis and development support by the Company's help desk, software and/or Data Center teams. This support may include preparation of datasets and development of software needed to provide the requested report. The effort required to fulfill each customer request may be different. An hourly charge will apply for the time required to prepare and deliver each off-line report.

TFN REGISTRY FUNCTIONS

T

4. Schedule of Rates and Charges (Cont'd)**4.1 Rate Regulations (Cont'd)****4.1.2 Rate Elements (Cont'd)****(D) Resp Org Reports (Cont'd)**

For call sampling reports, a per call sampled charge will apply in addition to the offline report charges. These reports may also be limited as to their availability through SCPs or other service providers. Reports are described in detail in User Guide 3270 Service Provider Reports (BR 780-004-227) and User Guide: Web-Based Reporting System (WRS) (BR 780-004-282).

TFN REGISTRY FUNCTIONS

T

4. Schedule of Rates and Charges (Cont'd)

4.1 Rate Regulations (Cont'd)

4.1.2 Rate Elements (Cont'd)

(E) MGI and WSI Activation and Testing

Hourly rate charges apply for the activation of the MGI and WSI. These charges apply per Resp Org except when multiple Resp Orgs are part of the same TFN Registry user account, in which case the charge applies per Resp Org entity (i.e., the company representing the multiple Resp Orgs).

T

Prior to interfacing with the TFN Registry on a mechanized basis, the Resp Org is required to participate in a series of tests as described in 3.5 preceding. The Resp Org will be assessed charges on a "per staff hour" or "per staff day" basis for these tests. Like the activation charge, this charge applies to each Resp Org company.

T

Additional MGI and WSI Testing is available at the request of the Resp Org. Charges for such additional testing will apply on a "per staff hour" basis.

(F) Miscellaneous Functions

Rates apply for miscellaneous functions on a per request basis. The elements provided are:

- (1) Batch Update Processing; and Batch Update Testing, as described in 3.4, preceding; and
- (2) Resp Org Changes

Rates apply per toll-free number, when the Company implements a Resp Org change, as described in 3.6, preceding.

TFN REGISTRY FUNCTIONS

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4. Schedule of Rates and Charges (Cont'd)

4.1 Rate Regulations (Cont'd)

4.1.3 Minimum Service Period

The minimum period for which charges are applicable for monthly rated services provided under this tariff is one day and the monthly rate will be prorated.

4.1.4 Bill Level Detail

Bills will be available to each Resp Org or the Resp Org's designated billing agent on the bill available date specified in 2.4.1 preceding. Billing records will be consolidated at the Resp Org level but will include sufficient service charge detail to enable the Resp Org to verify the accuracy of the bill.

Attachment B

47 CFR § 52.101 - General definitions.

CFR

§ 52.101 General definitions.

As used in this part:

(a) Toll Free Numbering Administrator (TFNA).

The entity appointed by the Commission under its authority pursuant to [47 U.S.C. 251\(e\)\(1\)](#) that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.

(b) Responsible Organization ("RespOrg").

The entity chosen by a [toll free subscriber](#) to manage and administer the appropriate records in the toll free Service Management System for the [toll free subscriber](#).

(c) Service Control Points.

The regional databases in the toll free [network](#).

(d) Service Management System Database ("SMS Database").

The administrative database system for [toll free numbers](#). The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about [toll free numbers](#) within their control. The Service Management System shares this information with the [Service Control Points](#). The entire system is the SMS database.


(e) Toll Free Subscriber.

The entity that has been assigned a [toll free number](#).

(f) Toll Free Number.

A telephone number for which the toll charges for completed calls are paid by the [toll free subscriber](#). The [toll free subscriber](#)'s specific geographic location has no bearing on what [toll free number](#) it can obtain from the SMS database.

[[62 FR 20127](#), Apr. 25, 1997, as amended at [83 FR 53395](#), Oct. 23, 2018]

-  CFR Toolbox

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

47 U.S. Code § 251. Interconnection

[U.S. Code](#) [Notes](#) [Authorities \(CFR\)](#)

(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS Each telecommunications carrier has the duty—

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
- (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS Each local exchange carrier has the following duties:

(1) RE SALE

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) NUMBER PORTABILITY

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) DIALING PARITY

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) ACCESS TO RIGHTS-OF-WAY

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) RECIPROCAL COMPENSATION

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) UNBUNDLED ACCESS

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) RE SALE The duty—

- (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) NOTICE OF CHANGES

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) COLLOCATION

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for

interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) IMPLEMENTATION

(1) IN GENERAL

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) ACCESS STANDARDS In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether—

- (A) access to such network elements as are proprietary in nature is necessary; and
- (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) PRESERVATION OF STATE ACCESS REGULATIONS In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

- (A) establishes access and interconnection obligations of local exchange carriers;
- (B) is consistent with the requirements of this section; and
- (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) NUMBERING ADMINISTRATION

(1) COMMISSION AUTHORITY AND JURISDICTION

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) COSTS

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) UNIVERSAL EMERGENCY TELEPHONE NUMBER

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9–1–1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9–1–1 is not in use as an emergency telephone number on October 26, 1999.

(f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS

(1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

- (A) is necessary—
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996.

7/1/2019

47 U.S. Code § 251 - Interconnection | U.S. Code | US Law | LII / Legal Information Institute

interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) "INCUMBENT LOCAL EXCHANGE CARRIER" DEFINED

(1) DEFINITION For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)

(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) TREATMENT OF COMPARABLE CARRIERS AS INCUMBENTS The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);


(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) SAVINGS PROVISION

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

(June 19, 1934, ch. 652, title II, § 251, as added Pub. L. 104-104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 61; amended Pub. L. 106-81, § 3(a), Oct. 26, 1999, 113 Stat. 1287.)

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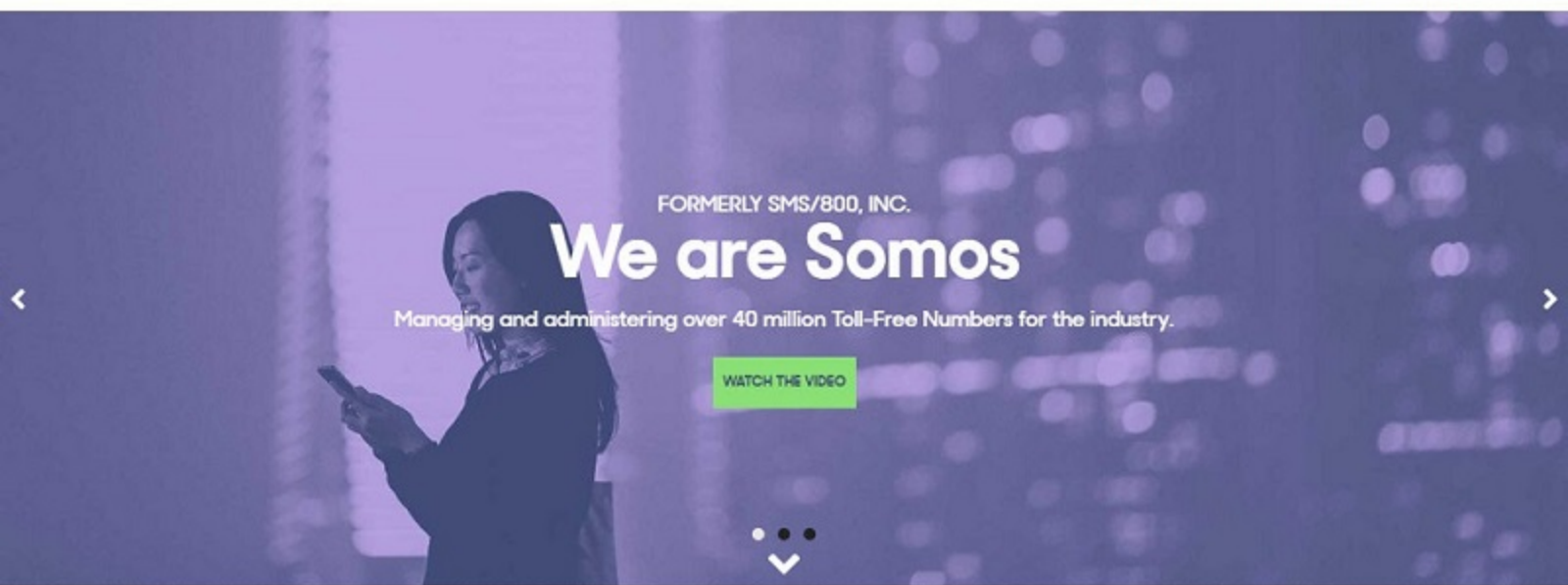
Code of Federal Regulations

Title 47 - Telecommunication

Volume: 3
Date: 2018-10-01
Original Date: 2018-10-01
Title: Section Â§ 52.101 - General definitions.
Context: Title 47 - Telecommunication. CHAPTER I - FEDERAL COMMUNICATIONS COMMISSION (CONTINUED). SUBCHAPTER B - COMMON CARRIER SERVICES (CONTINUED). PART 52 - NUMBERING. Subpart D - Toll Free Numbers.

§ 52.101 General definitions.

- As used in this part:
- (a) *Number Administration and Service Center ("NASC")*. The entity that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.
 - (b) *Responsible Organization ("RespOrg")*. The entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.
 - (c) *Service Control Points*. The regional databases in the toll free network.
 - (d) *Service Management System Database ("SMS Database")*. The administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control. The Service Management System shares this information with the Service Control Points. The entire system is the SMS database.
 - (e) *Toll Free Subscriber*. The entity that requests a Responsible Organization to reserve a toll free number from the SMS database.
 - (f) *Toll Free Number*. A telephone number for which the toll charges for completed calls are paid by the toll free subscriber. The toll free subscriber's specific geographic location has no bearing on what toll free number it can obtain from the SMS database.



This is how we work

For 22 years, the SMS/800 platform has provided proven Toll-Free connections. Somos continues this important work as we add new products and services that allow our providers to empower better Toll-Free connections for all.



TOLL-FREE SERVICE PROVIDERS & SERVICE REGISTRARS



BUSINESS USERS



CONSUMERS

Toll-Free Voice

Providing new growth ideas from a proven platform. Beyond simply the value of connecting with customers on the phone, Toll-Free is at the center of marketing, branding, and tracking activities for businesses.

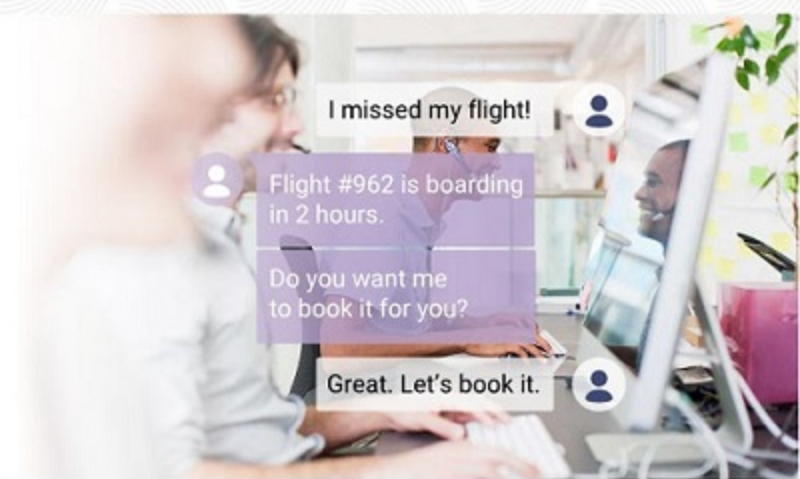
What is the SMS/800 platform?



Benefits of becoming a Toll-Free Service Provider



Reserve a Toll-Free Number



I missed my flight!



Flight #962 is boarding in 2 hours.

Do you want me to book it for you?

Great. Let's book it.



Text Enabled Toll-Free

Introducing the new Texting & Smart Services (TSS) Registry. Help businesses complement existing critical Toll-Free voice services with texting to build a stronger connection with customers.

What is the Texting & Smart Services Registry?



How can text enabled Toll-Free Numbers help you?



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Attachment C

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Toll Free Assignment Modernization

Toll Free Service Access Codes

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WC Docket No. 17-192

CC Docket No. 95-155

**COMMENTS OF SOMOS, INC.
ON NOTICE OF PROPOSED RULEMAKING**

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November 13, 2017

TABLE OF CONTENTS

INTRODUCTION AND EXECUTIVE SUMMARY	1
DISCUSSION	2
I. Distribution of TFNs	2
A. Assignment Mechanisms Should Be Equitable and Efficient	2
B. Auction Participation Should Be Limited to Resp Orgs	3
C. Somos Could Facilitate an Auction and Incorporate Subscriber Information into the SMS/800 Database	4
II. Secondary Market for TFNs	5
III. TFN Administration	6
A. TFN Rule Revisions and Use of TFNs for Public Purposes	6
B. TFN Administration	7

INTRODUCTION AND EXECUTIVE SUMMARY

Somos, Inc. (“Somos”) and its predecessors have provided neutral and effective administration of toll-free numbering for nearly 25 years. The current system of toll-free numbering administration has ensured that toll-free calling has “remain[ed] an important feature of the communications system,”¹ even as that system has experienced extraordinary change and innovation. The use of Toll-Free Numbers (“TFNs”) has steadily increased, growing from approximately 3 million TFNs in use when the Service Management System/800 (“SMS/800”) database was created in 1993,² to more than 41 million numbers in use today, necessitating the addition of six new toll-free NXX codes.³ This growth reflects not only the unique benefits that TFNs provide to businesses, government agencies, non-profits, and consumers alike⁴ but also the value that Somos and Responsible Organizations (“Resp Orgs”) have consistently contributed to the system through competent and efficient management of TFNs.

While many traditional telephony services have been in decline for several years, the use of TFNs continues to climb, remaining an important part of many businesses’ communications strategies. TFNs are trusted numbers often associated with brand identity, and their use today goes well beyond merely reversing long-distance charges. Innovation in the toll-free market is

¹ Notice of Proposed Rulemaking, *Toll Free Assignment Modernization*, FCC No. 17-124, ¶ 1 (rel. Sept. 28, 2017) (“Notice”).

² See Notice of Proposed Rulemaking, *Toll Free Service Access Codes*, 10 FCC Rcd 13692, ¶ 8 n.20 (1995).

³ *Report of the Toll Free Neutral Administrator (TFNA) to the North American Numbering Council* 2 (Dec. 1, 2016), http://www.nanc-chair.org/docs/mtg_docs/Dec16_TFNA_Report.pdf.

⁴ See Notice ¶ 1 (“Even with the growth of e-commerce many businesses, large and small, continue to use toll free numbers for sales and customer service, as well as for advertising and marketing purposes. Government organizations and non-profit health, safety, educational, or other non-profit public interest organizations also use toll free numbers to provide vital health and safety services to the public.”) (footnote omitted).

also driving adoption. TFNs are used for marketing analytics and are being dynamically inserted in mobile and online advertising. TFNs are also being text-enabled to give consumers even more choice in how they communicate with businesses, non-profits, and government agencies. The TFN industry is thriving and growing, which makes the Commission's present evaluation of TFN assignment very timely.

The Notice proposes a number of significant changes to the TFN ecosystem, such as creating an auction system for TFNs and facilitating a secondary market for TFNs. In keeping with its role as a neutral administrator, Somos generally takes no position with regard to the policy merits of the innovations in TFN assignment that the Commission has proposed. Rather, Somos files these comments primarily to emphasize two important points. *First*, Somos has the technical capability and expertise to implement the type of auction-based and market-based TFN assignment mechanisms that the Commission has proposed. *Second*, to the extent the Commission adopts new auction-based and/or market-based mechanisms to govern the assignment of TFNs (or some portion of them), it will be critical to maintain continuity and stability in TFN administration to ensure that any changes are overseen by an experienced and impartial entity.

DISCUSSION

I. Distribution of TFNs

A. Assignment Mechanisms Should Be Equitable and Efficient

The Commission proposes adding new mechanisms for the assignment of TFNs.⁵ In particular, the Commission proposes using a single-round, sealed-bid Vickrey auction to assign the approximately 17,000 TFNs in area code 833 “for which there were mutually exclusive

⁵ See Notice ¶ 5.

requests.”⁶ This proposal would represent a fundamental shift from how TFNs are currently assigned.⁷ Somos supports the efficient and equitable assignment of TFNs for the benefit of the industry, end-users, and consumers, but Somos expresses no view regarding which method or methods of assignment would be most equitable or efficient.

B. Auction Participation Should Be Limited to Resp Orgs

To the extent the Commission implements an auction-based assignment mechanism, Somos supports the Commission’s further proposal to limit participation in any auction to Resp Orgs, as defined in 47 C.F.R. § 52.101(b).⁸ Resp Orgs are the only entities that possess both the expertise and the functional capabilities needed to effectively participate in a market-wide auction proceeding. They are essential partners who bring stability to the toll-free numbering process by ensuring that TFNs are assigned, routed, and managed accurately and in accordance with the Commission’s rules. Further, as the Notice suggests,⁹ Resp Orgs have a system-wide perspective that would allow them to make markets in an auction and guide subscribers to bidding strategies that maximize value for the system as a whole.

Somos does not support direct subscriber participation in any TFN auction because it would introduce unnecessary and potentially costly administrative problems. Somos believes that any TFN auction mechanism should build on the functionalities of the SMS/800 database and be implemented consistent with the technical and procedural characteristics of that database. To achieve those efficiencies, Somos believes that it makes sense to limit auction participation to

⁶ *Id.* ¶ 6.

⁷ *See* 47 C.F.R. § 52.111 (“Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.”).

⁸ Notice ¶ 21.

⁹ *See id.*

the Resp Orgs that are currently certified to have access to the SMS/800 database.¹⁰ Having access to the SMS/800 database requires Resp Orgs to take on defined obligations that ensure that the integrity of the database is maintained and that TFNs operate correctly,¹¹ including becoming certified in the complex process of routing TFNs.¹² Allowing subscriber participation in TFN auctions would undermine this delegation of responsibility to Resp Orgs and would require either constructing an auction mechanism outside of the existing SMS/800 database or qualifying a large number of new entities to access and use that database. Either of these options would be burdensome and complicated, thus impeding an effective and efficient auction.

C. Somos Could Facilitate an Auction and Incorporate Subscriber Information into the SMS/800 Database

The Commission seeks comment on whether it should consider inclusion of subscriber information in the SMS/800 database as a means of notifying potential subscribers about auctions and encouraging subscriber participation in auctions through their chosen Resp Org(s).¹³ The administrative and technological cost of adding subscriber information to the SMS/800 database would be de minimis. The updated SMS/800 database that Somos is deploying includes expandable field parameters that could be used to capture any information that the Commission requires, including subscriber information or any other information that the Commission deems necessary, such as sales history information. As a policy matter, adding

¹⁰ New Resp Orgs must pass a certification test and other requirements prior to accessing the SMS/800 database. Somos provides a week-long training class for new Resp Orgs to prepare for the certification test.

¹¹ See *Regulations, Rates and Charges Applying to the Provision of SMS/800 Functions and Support Services* (effective Feb. 15, 2017), <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf>.

¹² TFNs can be routed from specific Number Plan Areas (“NPAs”) and even specific NXX prefixes, depending on which calls the subscriber wants to receive.

¹³ See Notice ¶ 22.

subscriber information to the SMS/800 database may have benefits, such as resolving disputes, helping law enforcement agencies, or providing greater market transparency for an auction. But any subscriber information entered in the SMS/800 database would have to be managed with due regard for subscriber privacy, Customer Proprietary Network Information rules, and Resp Orgs' legitimate competitive concerns.

The Commission also seeks comment on “the characteristics of an auctioneer who would be able to put in practice the [proposed] auction process . . . at the lowest cost.”¹⁴ Somos submits that any auctioneer would need to have the same characteristics of neutrality and administrative competence that the Commission requires of the Toll-Free Numbering Administrator (“TFNA”). Further, as discussed above, Somos believes that it would be most efficient for any auction proceeding to take place within the infrastructure of the existing SMS/800 database administered by Somos. Thus, Somos would be able and well-positioned to use the existing number reservation system to facilitate an auction, and adding auction functionality to that system could be done quickly and in a cost-effective manner.

II. Secondary Market for TFNs

The Commission seeks comment on “revising [its] current rules to promote development of a secondary market for [TFNs] generally.”¹⁵ Somos expresses no view as to the merits of creating a secondary market for TFNs. Regardless of the policy merits of a secondary market, Somos believes that such a market would be technically feasible to develop and administer, using the existing SMS/800 infrastructure. For such a secondary market to function properly, Somos believes that there would need to be a neutral, centralized clearinghouse to facilitate

¹⁴ *Id.* ¶ 24.

¹⁵ Notice ¶ 30.

transactions that could be referenced to adjudicate definitively any disputes regarding the right to use specific TFNs that are exchanged in the marketplace. Somos could create such a clearinghouse within its existing role as TFNA and operator of the SMS/800 database. Building on its quarter century of experience with Resp Orgs and the toll-free industry, Somos is uniquely positioned to administer any secondary market in TFNs.

The TFNA is particularly well-suited to oversee any secondary marketplace for TFNs because the administration of such a market would need to ensure equitable and non-discriminatory access to TFNs.¹⁶ In this regard, the involvement of a neutral administrator in a secondary market would be especially important if the Commission were to implement its proposal to eliminate or to scale back the hoarding and warehousing rules.¹⁷ In that scenario, a neutral administrator would be needed to ensure that anticompetitive behavior or other market failures did not undermine the statutory mandate of “equitable” access to TFNs.

III. TFN Administration

A. TFN Rule Revisions and Use of TFNs for Public Purposes

The Commission seeks comment¹⁸ on revising or eliminating certain TFN rules, including the first-come, first-served rule,¹⁹ and the prohibitions on brokering,²⁰ warehousing,²¹ and hoarding.²² Somos expresses no view as to the policy merits of the Commission’s proposed

¹⁶ See 47 U.S.C. § 251(e)(1).

¹⁷ See Notice ¶ 37 (seeking comment on whether to “revise or eliminate” the warehousing and hoarding prohibitions).

¹⁸ Notice ¶¶ 34-38.

¹⁹ See 47 C.F.R. § 52.111.

²⁰ See *id.* § 52.107(a)(2).

²¹ See *id.* § 52.105.

²² See *id.* § 52.107(a)(1).

rule revisions. However, these rules have played a major role in shaping the toll-free numbering system for the past 20 years. Therefore, any changes to these rules would introduce a paradigm shift to the TFN ecosystem, which in turn would make maintenance of a capable, experienced, and neutral TFNA more important than ever.

The Commission also seeks comment on whether certain desirable TFNs should be set aside for use, without cost, by government agencies and non-profit organizations, and whether the Commission should promulgate rules for reclaiming or reassigning such TFNs.²³ At the Commission's direction, Somos can and has set aside certain useful TFNs to promote the public interest. Somos agrees that there is sometimes a need to set aside, reclaim, or reassign TFNs in the public interest, and that such matters are appropriately addressed in the first instance by the Commission for implementation by the TFNA. Somos expresses no view as to the circumstances under which it would be appropriate to set aside, reassign, or reclaim TFNs in the public interest or as to the necessity or utility of codifying standards or procedures for doing so.

B. TFN Administration

The Commission seeks comment on “whether the Commission should consider changes to overall toll free number administration,”²⁴ including “the current TFNA model.”²⁵ The current system of neutral TFN administration has functioned well for many years and has successfully adapted to the changing needs of toll-free subscribers. The Commission has not put forth any specific proposal(s) for how the current system of TFN administration might change, and Somos does not believe any different regulatory approach is warranted.

²³ See *id.* ¶¶ 39-40.

²⁴ Notice ¶ 41.

²⁵ *Id.* ¶ 43.

Additionally, the Commission seeks comment on whether it should “consider a different mechanism for toll free number administration than the tariff mechanism,”²⁶ and to the extent the Commission retains the tariff mechanism, whether the Commission “should . . . require more transparency in Somos’s operations and budget.”²⁷ Somos supports maintaining the current SMS/800 Tariff because it provides transparency to the TFN administration process and ensures that SMS access is provided on a nondiscriminatory basis and at just and reasonable rates. Somos submits detailed financial information to the Commission each year to support proposed tariff filings,²⁸ and it is unclear how the Commission would propose making such financial information “more transparent” or why a more detailed breakdown of Somos’s costs would benefit the toll-free community.²⁹ Somos has always adhered to the requirement of charging cost-based rates for access to and use of the SMS/800 database and will continue to be subject to that requirement.

²⁶ *Id.* ¶ 42.

²⁷ *Id.* ¶ 43.

²⁸ See Letter from Aaron M. Panner, Counsel for Somos, to Marlene H. Dortch, WC Docket No. 17-192, CC Docket No. 95-155, at 2 (filed Sept. 19, 2017).

²⁹ See Notice ¶ 43.

Respectfully submitted,

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November 13, 2017

Attachment D

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Toll Free Assignment Modernization)	WC Docket No. 17-192
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	
)	
)	

REPORT AND ORDER

Adopted: September 26, 2018

Released: September 27, 2018

By the Commission: Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel issuing separate statements.

TABLE OF CONTENTS

	Para.
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	11
A. The Toll Free Assignment Rule	12
1. Adopting a Revised Toll Free Assignment Rule	12
2. Considerations of Assignment Methodologies	14
B. The 833 Auction	25
1. The 833 Auction Established as an Experiment	25
2. General Framework for the 833 Auction	28
3. Somos as Auctioneer for the 833 Auction	58
4. 833 Auction Proceeds	66
5. Toll Free Numbers Used for Public Purposes	74
6. Treatment of Trademark Holders	77
C. Secondary Markets for Toll Free Numbers	79
D. Other Toll Free Rule Revisions	86
E. Legal Authority	94
IV. PROCEDURAL MATTERS	96
V. ORDERING CLAUSES	99
APPENDIX A – Final Rules	
APPENDIX B – Final Regulatory Flexibility Analysis	

I. INTRODUCTION

1. Today, we demonstrate our continued commitment to modernize the way we assign toll free numbers by adopting an additional assignment methodology that is both market-based and equitable. Based on the Federal Communications Commission’s success using competitive bidding to assign spectrum licenses and award universal service support, we adopt new measures to explore the use of competitive bidding for the assignment of toll free numbers. To further evaluate this approach, as an

experiment we establish the framework in this Report and Order for an auction of the rights to use certain numbers in the recently-opened 833 toll free code. After the release of this Report and Order, we will initiate the pre-auction phase of this proceeding to seek input on the procedures for the auction. This experiment will help us determine how best to use competitive bidding to most effectively assign toll free numbers, as well as provide experience in applying auction procedures to the toll-free numbering assignment process.

II. BACKGROUND

2. Toll free calling and texting remains an important part of our communications system. Even as websites and smartphone apps have provided new avenues for public engagement, businesses, government entities, and non-profit organizations alike continue to make use of toll free services to keep an open line to the public, and enterprising subscribers put toll free numbers to use in creative new ways.¹ Toll free services rely on toll free numbers—a limited resource the Commission is charged by statute with making available “on an equitable basis.”²

3. Toll free calling began in 1967, with the introduction of the 800 toll free code.³ Thirty years later, when the Commission opened the second toll free code—888—it addressed an age-old question for the first time in the context of toll free numbers: How can limited resources be most fairly and efficiently allocated when some of those resources are more desirable than others?⁴ Whether they were desirable because they were easy to remember, because they could spell a name or common word, or because a subscriber had built up good will in that number in the 800 code, some 888 numbers were likely to be highly desirable while others might draw no interest at all.

4. Congress has given the Commission only one guideline regarding the allocation of toll-free numbers: Do so “on an equitable basis.”⁵ Interpreting this guideline after opening the 888 code, the Commission understood “equitable” to include two prongs: “orderly and efficient” and “fair.”⁶ After considering multiple methodologies to assign toll free numbers, the Commission settled on a first-come, first-served approach.⁷ Inspired by its low cost and simplicity, the Commission found such an approach to be “orderly and efficient”; it also concluded that it was “fair” because it did not discriminate on its face against any potential subscribers.⁸

5. Among the alternate methodologies the Commission considered when it opened the 888 code was competitive bidding. The Commission observed the fairness of this approach, stating that it “would offer all participants an equal opportunity to obtain a particular . . . number”; it also described

¹ See e.g., Somos Comments at 1-2.

² 47 U.S.C. § 251(e)(1).

³ The 800 code was established by AT&T, and the Commission’s role in the toll free service market increased over the following 30 years. See *Toll Free Service Access Codes*, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13693-95, paras. 3-10 (1995). In 1997, faced with the possibility of exhaust of the 800 code, the Commission concluded that the Communications Act of 1934, as amended, “require[s] the Commission to ensure the efficient, fair, and orderly allocation of toll free numbers.” *Toll Free Service Access Codes*, Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11176, para. 18 (1997).

⁴ *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058 (1998) (*1998 Toll Free Order*).

⁵ 47 U.S.C. § 251(e)(1).

⁶ *1998 Toll Free Order*, 13 FCC Rcd at 9065, para. 12.

⁷ *Id.* at 9068-69, paras. 22-25. The Commission also offered a limited right of first refusal to subscribers of 800 numbers that expressed an interest in subscribing to that number in the 888 code. *Id.* at 9071-72, paras. 29-30.

⁸ *1998 Toll Free Order*, 13 FCC Rcd at 9068-69, paras. 24-25.

auctions as “generally efficient.”⁹ Although the Commission had conducted spectrum auctions prior to the 888 code opening, the Commission concluded that an auction of toll free numbers presented “practical difficulties”—not only could it cost more than a first-come, first-served approach, but it could also require oversight to ensure that bidders met requirements and followed auction procedures.¹⁰

6. When the Commission decided how to assign certain 888 toll free numbers, the Commission’s auctions program was still in its relatively early stages.¹¹ In the 20 years since that decision, the Commission has conducted over 70 spectrum auctions, including those for commercial wireless licenses and broadcast construction permits, using various auction formats.¹² More recently, the Commission has begun using auctions as a mechanism for distributing universal service high-cost support.¹³

7. During this same period, the first-come, first-served approach to toll free number assignment—which was used with some modification for the 877, 866, 855, and 844 code openings¹⁴—has been subject to scrutiny by the Wireline Competition Bureau (Bureau) for falling short of expectations in several ways.¹⁵ For example, first-come, first-served assignment has rewarded actors that have invested in systems to increase the chances that their choices are received first in the Service Management System Database (the Toll Free Database);¹⁶ and, by assigning numbers at no cost, it has allowed accumulation of numbers without ensuring those numbers are being put to their most efficient use.¹⁷

8. *833 Code Opening.* In April 2017, the Bureau authorized Somos, Inc. (Somos), the Toll Free Numbering Administrator, to open the 833 toll free code.¹⁸ To facilitate the exploration of alternative assignment methodologies, the Bureau took steps in the pre-code opening process to identify numbers that could be part of an experiment regarding the use of an alternative assignment process, such as an auction.¹⁹ Specifically, the Bureau authorized Responsible Organizations (RespOrgs)²⁰ to identify up to 2,000 desired numbers in the 833 code and submit a request for those numbers to Somos.²¹ The Bureau directed Somos to review these requests, identify numbers subject to multiple requests,²² and

⁹ *Id.* at 9066, para. 16.

¹⁰ *Id.*

¹¹ The Commission’s first spectrum auction was held in July 1994. The Notice of Proposed Rulemaking for the 888 toll free code was adopted in October 1995, *Toll Free Service Access Codes*, CC Docket No. 95-155, Notice of Proposed Rulemaking, 10 FCC Rcd 13692 (1995), and the 1998 *Toll Free Order* was adopted in March 1998. 1998 *Toll Free Order*, 13 FCC Rcd 9058.

¹² See, e.g., *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, AU Docket Nos. 14-252 et al., Public Notice, 32 FCC Rcd 2786 (IA MB WTB 2017).

¹³ See *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031 (WTB 2012); *Tribal Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 902*, Public Notice, 29 FCC Rcd 1974 (WTB 2014); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428 (2018).

¹⁴ See Fed. Comm’n’s Comm’n, Wireline Competition Bureau, Indus. Analysis & Tech. Div., *Numbering Utilization in the United States* at 11 (Aug. 2007), https://apps.fcc.gov/edocs_public/attachmatch/DOC-275830A1.pdf (explaining that, “[i]n March 1996, calling code 888 was placed into service. The third toll free calling code (877) went into effect April 4, 1998, and the fourth toll free calling code (866) went into effect July 29, 2000”); see also generally *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 25 FCC Rcd 13687 (WCB 2010) (*855 Code Opening Order*); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 28 FCC Rcd 16139, (WCB 2013) (*844 Code Opening Order*).

place these “mutually exclusive” numbers in unavailable status²³ pending the outcome of this proceeding.²⁴

9. Nearly 150 RespOrgs participated in the 833 pre-code opening process, requesting over 72,000 numbers.²⁵ Somos identified over 17,000 mutually exclusive numbers—including “repeaters” (833-333-3333, 833-888-8888, 833-800-0000, etc.) and numbers that spell memorable words or phrases (833-DENTIST, 833-DOCTORS, 833-FLOWERS . . . etc.)²⁶—and placed those numbers in unavailable status.²⁷ Ten or more RespOrgs requested over 1,800 mutually exclusive numbers, and 65 or more RespOrgs requested the ten most popular numbers.²⁸

10. *Notice of Proposed Rulemaking.* In September 2017, the Commission released the *Toll Free Assignment NPRM*, which proposed and sought comment on steps to better promote the equitable and efficient assignment and use of toll free numbers.²⁹ Specifically, the Commission proposed expanding the existing toll free number assignment rule to include assignment by auction or other equitable assignment methodologies, and assigning the over 17,000 mutually exclusive numbers in the 833 toll free code through competitive bidding.³⁰ The Commission also sought comment on eliminating the brokering, warehousing, and hoarding prohibitions;³¹ setting aside numbers for use for public interest purposes;³² options to address abuse of toll free numbers;³³ and changes to overall toll free numbering administration.³⁴ The Commission received comments from various stakeholders including RespOrgs,³⁵ service providers,³⁶ and companies that have built their businesses around toll free calling.³⁷

III. DISCUSSION

11. Given the passage of time since adopting the first-come, first-served methodology, and experience gained in opening five toll free codes, we modify our toll free number assignment rule to give the Commission flexibility to implement alternative approaches to assigning numbers.³⁸ As an

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¹⁵ See *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 31 FCC Rcd 6828, 6828-30, paras. 2-6 (WCB 2016) (*800 Number Release Order*); *844 Code Opening Order* 28 FCC Rcd at 16140-42, paras. 3, 6-7; *855 Code Opening Order*, 25 FCC Rcd at 13688-90, paras. 3-6.

¹⁶ See *844 Code Opening Order*, 28 FCC Rcd at 16140-41 para. 3 (expressing concern that registrants “with enhanced connectivity to the [toll free] database would be able to quickly reserve sought-after . . . numbers”); *855 Code Opening Order*, 25 FCC Rcd at 13687, para. 3 (identifying same problem)); *800 Number Release Order*, 31 FCC Rcd at 6829-30, paras. 3-6 (identifying same problem). The Toll Free Database is the “database system for toll free numbers,” in which entities reserve numbers and “enter and amend the data about toll free numbers within their control.” 47 CFR § 52.101(d).

¹⁷ Cf. *855 Code Opening Order*, 25 FCC Rcd at 13687, para. 3 (“The Commission’s rules strictly prohibit warehousing of toll free numbers . . . Nevertheless, we are concerned that certain [entities] may still engage in this practice. [A] daily allocation scheme is necessary to help prevent this activity and ensure a fair allocation of 855 numbers.”); Petition for Waiver of Somos, Inc., WC Docket No. 95-155, at 3 (filed Mar. 21, 2016), <https://ecfsapi.fcc.gov/file/60001544143.pdf> (noting that in a limited release of 800 toll free numbers disconnected and returned to the spare pool, “two entities dominated the release, obtaining more than 70% of all available 800 numbers.”). The Bureau addressed this latter issue, and the issue of some registrants having enhanced connectivity to the toll free database, by limiting registrants to 100 numbers per day for a month after the opening of the last two codes, 844 and 855. See *844 Code Opening Order*, 28 FCC Rcd at 16140-41, para. 3, 16142, paras. 6-7; *855 Code Opening Order*, 25 FCC Rcd at 13688-90, paras. 3-6; see also *800 Number Release Order*, 31 FCC Rcd at 6828-30, paras. 2-6 (adopting same process for release of 800 numbers disconnected and returned to the spare pool).

¹⁸ *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 32 FCC Rcd 3153 (WCB 2017) (*833 Code Opening Order*).

experiment in using such an alternative approach, we establish an auction to assign the over 17,000 identified mutually exclusive numbers in the 833 code (the 833 Auction). We also designate Somos as the auctioneer. While this Report and Order provides Somos with the general framework for the 833 Auction, we also provide for a pre-auction process to establish detailed auction procedures after additional notice and comment, as is typical in all Commission auctions. We require Somos to implement the established procedures to conduct the auction and, after the bidding has ended, to provide the Commission with all data and information gained from the auction. Moreover, consistent with our goal of assigning numbers via a market mechanism, we create an exception to our brokering, warehousing, and hoarding prohibitions for numbers acquired through competitive bidding.

B. The Toll Free Assignment Rule

1. Adopting a Revised Toll Free Assignment Rule

12. We adopt the toll free assignment revision of section 52.111 of our rules that the Commission proposed in the *Toll Free Assignment NPRM*.³⁹ Our revised rule allows the Commission to direct the assignment of toll free telephone numbers to RespOrgs and subscribers on an equitable basis by competitive bidding, on a first-come, first-served basis, by using an alternative assignment methodology, or by a combination of these approaches. We find that our experience assigning toll free numbers since the original rule's adoption 20 years ago—in which time certain entities have undertaken efforts to increase their chances that desirable numbers are assigned to them through the first-come, first-served system—supports the revised rule's flexible approach to number assignment and is supported by the record.⁴⁰

13. With our revised rule, we increase our options to assign toll free numbers in a way that accounts for valuable social use. The revised rule provides us greater flexibility to explore alternative assignment mechanisms in addition to the current first-come, first-served methodology. By revising our rule to permit—but not obligate—the Commission to assign toll free numbers by auction, we add a

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³⁹ *833 Code Opening Order*, 32 FCC Rcd at 3155, para. 7.

⁴⁰ A Responsible Organization, or “RespOrg,” is an “entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.” 47 CFR § 52.101(b).

²¹ *833 Code Opening Order*, 32 FCC Rcd at 3154-55, para. 6.

²² *Id.* at 3155, para. 6.

²³ Unavailable status means “[t]he toll free number is not available for assignment due to an unusual condition.” 47 CFR § 52.103(a)(8).

²⁴ *833 Code Opening Order*, 32 FCC Rcd at 3155, para. 6. Numbers that were not requested by multiple RespOrgs were made available on a first-come, first-served basis. *Id.*

²⁵ Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, at 1 (filed Aug. 31, 2017) (Somos Aug. 31, 2017 *Ex Parte* Letter).

²⁶ Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, at 1 (filed Sept. 5, 2017).

²⁷ See Somos, Inc., Report of the Toll Free Neutral Administrator (TFNA) to the North American Numbering Council at 6 (2017), http://www.nanc-chair.org/docs/mtg_docs/Jun17_TFNA_Report.pdf.

²⁸ Somos Aug. 31, 2017 *Ex Parte* Letter at 1.

²⁹ *Toll Free Assignment Modernization*, WC Docket 17-192, CC Docket No. 95-155, Notice of Proposed Rulemaking, 32 FCC Rcd 7885 (2017) (*Toll Free Assignment NPRM*).

³⁰ *Id.* at 7888, 7890, paras. 5, 12. The Commission also proposed and sought comment on various specific auction rules and mechanisms. *Id.* at 7890-93, paras. 12-23.

valuable tool to our tool chest while maintaining the flexibility to craft assignment mechanisms suited to the nature of different inventories of numbers.⁴¹ One commenter argues that, in so doing we are “upending” the toll free market to address demand for a “statistically insignificant” amount of toll free numbers.⁴² But the demand for those specific numbers is not insignificant and, in fact, demonstrates the need to reconcile the demand with the assignment mechanism. Our rule does not mandate the use of a new assignment mechanism, instead allowing for targeted modifications to the assignment process going forward as circumstances require.

2. Considerations of Assignment Methodologies

14. We find that revising our rules to allow alternative means of toll free number assignment is consistent with our statutory obligation to distribute numbers on an equitable basis. Section 251(e)(1) of the Communications Act of 1934, as amended (the Act), directs the Commission to make numbers available on an equitable basis.⁴³ We find that the revised rule adopted today facilitates assignment of numbers equitably, per the standards of our precedent. The flexibility of our rule, including the option to use competitive bidding to assign toll free numbers, increases the likelihood that, as limited resources, toll free numbers will be assigned to parties that value the numbers most.

15. In considering whether number distribution means are equitable under section 251(e)(1), we consider the principles of order, efficiency, and fairness.⁴⁴ In so doing, the Commission has allowed exceptions to the assignment of numbers by the first-come, first-served approach, with the intent to serve the broader public interest of *equitably* distributing the finite resource of toll free numbers.⁴⁵ When it established the first-come, first-served assignment method in the *1998 Toll Free Order*,⁴⁶ the Commission opined that pursuant to section 251(e)(1), the Commission must apply a two-part test to determine if any given assignment methods were “1) orderly and efficient, and 2) fair.”⁴⁷ When it first applied this test over twenty years ago, based on certain limitations and unknown factors with respect to number auctions,⁴⁸ the Commission found that “the use of a first-come, first-served assignment method is a more equitable method of allocating these numbers.”⁴⁹ With the benefit of some twenty years’ of additional

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³¹ *Id.* at 7895-97, paras. 30-33, 36-37. Brokering, under our rules, is the selling of numbers by a subscriber for a fee, 47 CFR § 52.107(a), (a)(2); hoarding is the acquisition of more numbers by a subscriber than it intends to use, 47 CFR § 52.107(a); and warehousing is the reservation of numbers by a RespOrg without an actual subscriber for whom the numbers are being reserved, 47 CFR § 52.105.

³² *Toll Free Assignment NPRM*, 32 FCC Rcd at 7897-98, para. 39.

³³ *Id.* at 7898, para. 40.

³⁴ *Id.* at 7898-7899, paras. 41-43.

³⁵ *See, e.g.*, Coalition of Canadian RespOrgs Comments; TollFreeNumbers.Com Comments.

³⁶ *See, e.g.*, CenturyLink Comments; Verizon Comments.

³⁷ *See, e.g.*, 1-800-CONTACTS Comments; 1-800-FLOWERS Comments; RingBoost.com Comments.

³⁸ *See* FCC, Wireline Competition Bureau, Indus. Analysis & Tech. Div., Numbering Utilization in the United States at 11 (2013), <https://docs.fcc.gov/public/attachments/DOC-319997A1.pdf> (explaining that, “[i]n March 1996, calling code 888 was placed into service. The third toll free calling code (877) went into effect April 4, 1998, and the fourth toll free calling code (866) went into effect July 29, 2000”); *see also* 844 Code Opening Order, 28 FCC Rcd at 16139, para. 1; 855 Code Opening Order, 25 FCC Rcd at 13687, para 1.

³⁹ *See Toll Free Assignment NPRM*, 32 FCC Rcd at 7896, para. 35. We adopt the proposed rule revision with two minor changes. First, we make our rule consistent with the rules governing spectrum and universal service support competitive bidding, by using the phrase “competitive bidding” rather than “auction.” *See, e.g.*, 47 CFR §§ 1.2102, 54.315(a). Second, we improve the clarity of our rule by removing proposed language providing that the Commission will assign numbers through an assignment methodology “as circumstances require.” We further make administrative revisions to our toll free rules, consistent with the recommendations of the North American Numbering Council (NANC) Toll Free Assignment Modernization Working Group Report. *See* Letter from Travis

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experience in toll free number allocation, in addition to extensive use of the auction mechanism in various contexts, we now reassess this conclusion.

16. *Section 251(e)(1) Test for Assigning Toll Free Numbers.* We reapply the 251(e)(1) two-part test and conclude that the use of competitive bidding, like the other assignment methodologies in revised rule section 52.111, will result in an orderly, efficient, and fair assignment of toll free resources. The Commission has explained that an *orderly* toll free number assignment mechanism “will simplify the administrative requirements necessary to assign toll free numbers and avoid the need to resolve competing claims among subscribers to particular numbers.”⁵⁰ Additionally, an *efficient* toll free number assignment mechanism will minimize exhaust of the toll free numbering resource.⁵¹

17. After reevaluating the criteria in the *1998 Toll Free Order*,⁵² we conclude that assigning toll free numbers through the use of competitive bidding is orderly; any entity interested in a toll free number can, through an auction, express the value it places on a particular number, in a clear, transparent, and relatively simple manner. Moreover, assigning a number to the entity that places the highest bid is easy to understand and avoids the need to resolve competing claims among potential subscribers to particular numbers. Further, the first-come, first-served approach has not always resulted in an orderly and efficient distribution of highly-valued—i.e., mutually exclusive—numbers. Since the Commission’s adoption of this approach in the *1998 Toll Free Order*, the Bureau has intervened to withhold or ration highly desired numbers in subsequent code openings due to concerns with the first-come, first-served assignment process. The Bureau, expressing concern that RespOrgs were inefficiently warehousing numbers, implemented conservation plans for four out of the seven presently available toll free number codes.⁵³

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Kavulla, Chairman, North American Numbering Council, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC 17-912, CC Docket 95-155, Attach. NANC TFAM Working Group, Recommended Rule and Policy Changes: Toll free Number Assignment Modernization, Report to the FCC of the NANC Toll Free Assignment Modernization (TFAM) Working Group (filed Aug. 27, 2018), https://ecfsapi.fcc.gov/file/10827446011359/Jun18_NANC_TFAM_Report_Final.pdf (NANC Report); *see infra* Section III.D.

⁴⁰ *See, e.g.*, ATFP Comments at 4; Power Auctions at 2; Verizon Comments at 2, 5; *cf.* CSF Corp. Comments at 3-4.

⁴¹ *See e.g.*, Comet Media Comments at 1 (understand need for auction for certain high value toll free numbers); CSF Corp. Comments at 4 (in favor of alternative methodology for code release for the numbers in high demand); Network Telephone Services, Inc. Comments at 1 (auction is not necessary for typical toll free number which usually only one party seeks); Verizon Comments at 2 (ensure auction only for numbers for which there is a genuine competitive demand by actual customers).

⁴² *See* CSF Corp. Comments at 2 (observing that the 17,000 mutually exclusive numbers in the 833 code represent just 0.2% of all numbers in the code).

⁴³ 47 U.S.C. § 251(e)(1) (“The Commission ... shall make such numbers available on an equitable basis.”).

⁴⁴ *See generally* *1998 Toll Free Order*, 13 FCC Rcd 9058.

⁴⁵ For example, the Wireline Competition Bureau allowed a right of first refusal in 1997 for 800 number subscribers seeking corresponding 888 code numbers. *1998 Toll Free Order*, 13 FCC Rcd at 9065 para. 13. The Bureau has also rationed the release of disconnected 800 code numbers, and the release of 844 and 855 numbers upon opening

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18. Given the Commission's considerable experience with auctions since 1998 and the ability of an entity to bid the value it places on a particular number in a clear, transparent, and relatively simple manner, we believe any administrative costs and "practical difficulties" in holding an auction would be significantly lower than previously believed, making it more likely that the efficiencies of competitive bidding will outweigh such costs. Therefore, we conclude that adding competitive bidding as one possible assignment method meets the first prong of our established test, namely, that an assignment mechanism be orderly and efficient.

19. We also find that the market-based assignment methodologies in revised rule 52.111 are fair, meeting the second part of the section 251(e)(1) test. The Commission has explained that a *fair* toll free number assignment mechanism is one that gives "[a]ll subscribers . . . an equal opportunity to reserve desirable toll free numbers as new codes are opened."⁵⁴ Using a competitive bidding process to assign mutually exclusive toll free numbers can provide interested parties with a level playing field, on which everyone has the same ability to express their valuation for specific numbers in a clear, transparent manner, using an equally accessible method. Based on our experience with auctions in other contexts,⁵⁵ we find that we are more likely to achieve our stated objective of assigning mutually exclusive toll-free numbers on an equitable basis by allowing all qualified bidders the same opportunity to express their value for a number and assigning the numbers to the party that values it the most, than if we use a method by which a number is assigned to the party that employs the most advanced access system.⁵⁶

20. While in its 1998 application of this test, the Commission stated that auctions "offer all participants an equal opportunity to obtain a particular . . . number,"⁵⁷ it also concluded that a first-come, first-served assignment mechanism was also fair and selected that approach due to its then perceived benefits of order and efficiency.⁵⁸ We find that the Commission's prior conclusion has not borne out for

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of those codes. *See 800 Number Release Order*, 31 FCC Rcd at 6828-30, paras. 2-6; *844 Code Opening Order*, Order, 28 FCC Rcd at 16140-41, para. 3; *855 Code Opening Order*, 25 FCC Rcd at 13688-90, paras. 3-6. Aside from modifications of first-come, first-served, assignment, the Bureau has also assigned numbers upon request for reasons of national defense and public safety. *See, e.g., Toll Free Service Access Codes*, Order, 32 FCC Rcd 7407, 7407, para. 1 (WCB 2017) (permanent assignment of 800-US-REWARD to U.S. State Department) (*US-Reward Reassignment Order*); *Toll Free Service Access Codes*, Order, 21 FCC Rcd 9925, 9925, para. 1 (WCB 2006) (*800-RED-CROSS Permanent Reassignment Order*) (permanent assignment of 800-RED-CROSS to the American Red Cross).

⁴⁶ *See generally 1998 Toll Free Order*, 13 FCC Rcd 9058.

⁴⁷ *Id.* at 9065, para. 12.

⁴⁸ *See id.* at 9066, para. 16.

⁴⁹ *Id.* at 9065, para. 13.

⁵⁰ *Id.* at 9065, para. 12.

⁵¹ *Id.*

⁵² *See generally id.*

⁵³ *See Toll Free Service Access Codes*, CC Docket No 95-155, Report and Order, 11 FCC Rcd 2496, 2501, 2504, 2509, paras. 22, 38, 58 (CCB 1996) (*1996 Toll Free Order*); *855 Code Opening Order*, 25 FCC Rcd at 13688-90,

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highly desired toll free numbers; indeed, the Bureau has intervened in the last four toll free code openings, altering the first-come, first-served methodology *precisely* to ensure fairness in the toll free number assignment methodology.

21. Since the *1998 Toll Free Order* was adopted, the Commission has observed that the underlying numbering access technology has evolved: Certain automated systems now used to access the Toll Free Database have placed smaller RespOrgs at a competitive disadvantage because they do not have the capacity to quickly reserve sought-after vanity numbers.⁵⁹ Enhanced connectivity gives larger, more sophisticated entities the incentive to invest in these systems to increase the chances that their number requests are processed. This situation undermines a key rationale for the first-come, first-served approach: that all interested parties have an equal chance of getting a number.⁶⁰ And while it advances the separate goal of ensuring a number is quickly allocated to the party that values it most highly—a differential willingness to invest indicates an underlying differential in the value the investing party sees in numbers—it does so only loosely, since there is no direct mechanism that allows potential subscribers to bid in their valuation. In the absence of conservation controls, the Bureau has seen evidence of unfair access following new toll free code openings. For example, following the 877 and 866 code openings, the Commission received reports from RespOrgs suggesting that during database “timeouts,” only RespOrgs with more advanced access systems were able to reserve numbers, while RespOrgs not using those advanced systems were “locked out” and unable to reserve their desired numbers.⁶¹ For the 855 and 844 toll free code openings, the Bureau directed the toll free database administrator to limit the quantity of toll free numbers a RespOrg may reserve to 100 per day for the first 30 days—“larger RespOrgs with enhanced connectivity to the [toll free] database” would otherwise be able to more quickly to reserve sought-after numbers than smaller RespOrgs without enhanced connectivity.⁶²

22. We reject commenters’ arguments that an auction is unfair because it favors parties with

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paras. 3-6; *844 Code Opening Order*, 28 FCC Rcd at 16140-41, para. 3; *800 Number Release Order*, 31 FCC Rcd at 6830, para. 5; *Toll Free Service Access Codes*, Order, 32 FCC Rcd at 3154-55, para. 5.

⁵⁴ *1998 Toll Free Order*, 13 FCC Rcd at 9069, para. 25.

⁵⁵ We expect that the experimental use of an auction for mutually exclusive 833 toll free numbers (as adopted in this item) will yield additional insight into whether auctions are the best methodology for assigning toll free numbers and, if so, how best to use competitive bidding in the future.

⁵⁶ *Cf.*, CSF Corp. Comments at 3-4 (arguing that an auction assignment methodology is appropriate “for a small amount of numbers that [a]re in high demand”); Verizon Comments at 2 (“Any auction methodology . . . should ensure that auctions are used only for numbers for which there is a genuine competing demand by actual customers.”). Moreover, the current method leads to unnecessary expenditure on equipment to gain a timing advantage, whereas the proceeds from a toll free number auction will go towards the administration of the toll free system.

⁵⁷ *See 1998 Toll Free Order*, 13 FCC Rcd at 9066, para. 16.

⁵⁸ *Id.* at 9069, para. 25.

⁵⁹ *800 Number Release Order*, 31 FCC Rcd at para. 4. *See also 844 Code Opening Order*, 28 FCC Rcd 16139, 16141, para. 3, n. 13 (quoting comments from SMS/800, Inc., which stated that RespOrgs with the financial wherewithal to connect to the toll free database using a technology known as Mechanized Generic Interface (MGI) have an advantage over other RespOrgs).

⁶⁰ *See, cf.*, ATIS SNAC Comments at 2-3 (“ATIS SNAC is opposed to the use of auctions to allocate toll free numbers given the success of the current allocation methodologies (e.g., limited allocation code openings for 844

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deep pockets.⁶³ An auction allocates the number to the bidder willing to pay the most, but that willingness may derive from expected future revenues from a profitable business case, rather than from the bidders' current finances. Moreover, auctions should reflect the value of the toll free number in the marketplace and a bidder may be able to obtain financing based on anticipated profitability. We anticipate that a first-come, first-served approach will continue to be an appropriate assignment methodology in some circumstances, however. For instance, first-come, first-served assignment may be appropriate for less desirable numbers, or in instances where numbers made available via an auction are not assigned thereby. We expect that our experience with the 833 Auction will provide us with insight we can use when determining the best mechanism for assignment of a given set of numbers.

23. *Effective Assignment of Toll Free Resources.* Our revised assignment rule gives us a new option for the assignment of numbers, without removing currently available options. The Commission has extensive experience in public outreach and education about the auction process, including online tutorials for the auction application and bidding processes.⁶⁴ Based on this experience, we disagree with the argument that providing adequate notice to the public about auction procedures will be unreasonably costly.⁶⁵ Nor do we agree with commenters who argue that preparing for and participating in the auction will be unduly burdensome to participants.⁶⁶ We recognize that individual subscribers or RespOrgs acquiring toll free numbers through an auction may incur some costs relating to the participation in the auction that they did not incur through the first-come, first-served process, but we believe those costs are outweighed by the benefits to the toll free system at large when toll free numbers are put to their highest-valued use. Many toll free numbers have a much greater value for certain subscribers.⁶⁷ Some 150 RespOrgs participated in the 833 pre-code opening process, requesting over 72,000 numbers.⁶⁸ This fact undermines the basic rationales on the effectiveness of first-come, first-served for mutually exclusive numbers—that first-come, first-served allocation requires less oversight,⁶⁹ and avoids “the need to resolve competing claims among subscribers to assignment of particular numbers.”⁷⁰ On the contrary, the Commission has been compelled to provide increased oversight by intervening multiple times to ensure

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and 855 and first-come, first-served allocations for all other assignments) and the significant and unknown impacts that this proposal could have on the toll free industry and on toll free subscribers.”).

⁶¹ See, e.g., Petition of Toll Free Number Coalition Petition for Emergency Relief and Expedited Action, CC Docket No. 95-155, at 9-10 (filed Nov. 9, 2000), <https://ecfsapi.fcc.gov/file/6512058797.pdf>.

⁶² 855 Code Opening Order, 25 FCC Rcd at 13687, para. 1, 13688, para 3; 844 Code Opening Order, 28 FCC Rcd at 16139, para. 1, 16140-41, para. 3.

⁶³ See e.g., 800 Response Reply at 3-4; ATIS SNAC Comments at 3; ACTIS Comments at 3, CenturyLink Comments at 3; Elizabeth White Comments at 1; see also Conduit Consulting Comments at 1; CSF Corp. Comments at 3.

⁶⁴ See, e.g., *Auction of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services, Comment Sought on Competitive Bidding Procedures for Auctions 101 (28 GHz) and 102 (24 GHz)*, AU Docket No. 18-85, Public Notice, FCC 18-43 (2018) (explaining the bidding process in a spectrum auction).

⁶⁵ See 800 Response Reply at 7.

⁶⁶ See, e.g., Conduit Consulting Comment at 1; Verizon Comments at 3.

⁶⁷ See *supra* para. 9 (indicating that certain 833 numbers are much more highly valued than others); cf. Verizon Comments at 1 (“Any auction methodology – including the initial designation of numbers subject to auction in the first place – should ensure that auctions are used only for numbers for which there is a genuine competing demand by actual customers.”).

⁶⁸ Somos Aug. 31, 2017 *Ex Parte* Letter at 1.

new code openings are “orderly and efficient” and “fair,”⁷¹ and adjudicated numbering conflicts in at least two notable cases.⁷² Our practice of resolving competing claims has previously been resolved inefficiently in favor of the party most privileged with access to the faster reservation system.⁷³ Instead of the number going to whichever entity happens to be first in the door (thereby preventing others, who may value it more, from getting it), use of competitive bidding will give all entities an equal opportunity to express the value they place on any particular number. By increasing the likelihood that mutually exclusive toll free numbers are assigned to parties that will use the resource in the most productive way, we in turn increase the efficiency and equity of our number assignment process.

24. Revising the Commission’s rules to allow us to assign numbers by auction, on a first-come, first-served basis, an alternative assignment methodology, or by a combination of the forgoing as circumstances require, gives the Commission the flexibility to adapt our assignment procedures to the circumstances and characteristics of the specific toll free numbers to be assigned. In any future toll free code release, the revised rule will not require the Commission to use competitive bidding and, if it decides to use competitive bidding, the Commission will not be confined to a specific auction design, or the designation of a particular auctioneer. Instead, for new toll free code openings, the Commission can determine the best method to proceed for assigning numbers, armed with the data collected in the 833 Auction.

B. The 833 Auction

1. The 833 Auction Established as an Experiment

25. We establish the 833 Auction as an experiment to analyze the most efficient way to use competitive bidding as a toll free number assignment method. We agree with one commenter who argues that, as a first step, the Commission should assign toll free numbers by auction on a “limited, trial basis,” which will allow us to “study the impact of this new allocation method and make any necessary changes to serve the public interest.”⁷⁴ Thus, we will offer in this auction only the rights to use the 17,000 mutually exclusive numbers in the 833 toll free code that were identified pursuant to the *833 Code Opening Order*. Once the auction is complete, we direct Somos to assign those numbers to winning bidders based on the auction’s results. We will continue to assign 833 numbers that are not part of the 833 Auction using our first-come, first-served approach.

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⁶⁹ *Cf. 1998 Toll Free Order*, 13 FCC Rcd at 9066, para. 16 (stating “lotteries and auctions are more difficult to administer than a first-come, first-served reservation process because they require greater oversight and would likely result in delay in the issuance of numbers”).

⁷⁰ *Id.* at 9068, para. 22.

⁷¹ See *1996 Toll Free Order*, 11 FCC Rcd at 2501, 2504, 2509, paras. 22, 38, 58; *855 Code Opening Order*, 25 FCC Rcd at 13688-90, paras. 3-6; *844 Code Opening Order*, 28 FCC Rcd at 16140-41, para. 3; *800 Number Release Order*, 31 FCC Rcd at 6830, para. 5; *Toll Free Service Access Codes*, Order, 32 FCC Rcd at 3154-55, para. 5.

⁷² See, e.g., *Toll Free Service Access Codes*, Order, 32 FCC Rcd 7407, 7407, para. 1 (WCB 2017) (permanent assignment of 800-US-REWARD to U.S. State Department) (*US-Reward Reassignment Order*); *Toll Free Service Access Codes*, Order, 21 FCC Rcd 9925, 9925, para. 1 (WCB 2006) (*800-RED-CROSS Permanent Reassignment Order*) (permanent assignment of 800-RED-CROSS to the American Red Cross).

⁷³ See *844 Code Opening Order*, 28 FCC Rcd 16139, 16141, para. 3, n. 13 (quoting comments from SMS/800, Inc., which stated that RespOrgs with the financial wherewithal to connect to the toll free database using a technology known as Mechanized Generic Interface (MGI) have an advantage over other RespOrgs).

⁷⁴ CenturyLink Comments at 1-2, 6-7. By adopting the 833 Auction as an experiment, the actions we take today are also consistent with the recommendation of the Administrative Conference of the United States (ACUS) that agencies adopt pilot programs and learn from regulatory experience. See Administrative Conference of the United States, Administrative Conference Recommendation 2017-6, Learning from Regulatory Experience (2017) (ACUS Report).

26. After completion of the 833 Auction, and subsequent number assignments, the Bureau will issue a report outlining the outcomes of the 833 Auction, lessons learned, and future recommendations for toll free number assignment methodologies.

27. We intend to use this experiment as an opportunity to evaluate the contours of using competitive bidding for toll free assignments and to determine how to best use a market-based assignment to effectively assign toll free numbers. We also underscore the need to reform the current method of assigning highly desired toll free numbers. We envision that the experiment, as designed in this Report and Order and forthcoming Auction Procedures Public Notice, will meet our goals of equitable distribution and be used, as designed, for certain future toll free number assignments or be used for future assignments with refinements.

2. General Framework for the 833 Auction

28. In the *Toll Free Assignment NPRM*, the Commission “invite[d] parties to . . . offer further economic, legal, or logistical insights about . . . auction designs and procedures.”⁷⁵ Given the experimental nature of using competitive bidding as a mechanism for assigning toll free numbers, we outline here a general framework for the 833 Auction and require a pre-auction proceeding in which we will seek public input on the procedures for the auction after the release of this Report and Order.⁷⁶

29. Specifically, we will issue an Auction Comment Public Notice after the release of this Report and Order and will solicit public input on proposed application and bidding procedures, including specific proposals for application requirements and bidding mechanisms, such as bid processing and determining payments. Thereafter, we will release an Auction Procedures Public Notice, and will specify final auction procedures, including dates, deadlines, and other final details of the application and bidding processes. We require the auctioneer to implement the auction pursuant to the procedures specified in the Auction Procedures Public Notice. We conclude that, in addition to the general framework we provide here, the Commission’s practice of finalizing auction procedures in the pre-auction process will give interested participants sufficient time and opportunity both to comment on the final procedures and to develop business plans in advance of the auction.

a. Auction Design

30. We adopt the proposal in the *Toll Free Assignment NPRM* to conduct the 833 Auction as a Vickrey single round, sealed-bid auction.⁷⁷ In this type of auction, a qualified bidder can submit a sealed-bid for each available toll free number that the bidder wants.⁷⁸ The 833 Auction will consist of only a single round of bidding, and the highest bidder for each toll free number will win the rights to that number, but will generally only pay the second highest bid for them.⁷⁹

31. A Vickrey auction can yield an equitable and efficient assignment of mutually exclusive toll free numbers as it incentivizes bidders to bid their true valuation.⁸⁰ In particular, the amount paid by

⁷⁵ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7892, para. 20.

⁷⁶ We expect that our approach to the 833 Auction will be modeled on the rules and procedures governing auctions for wireless spectrum licenses, broadcast permits, and universal service support, where appropriate, given the success and familiar nature of those auctions. See generally 47 CFR §§ 1.2101 *et seq.*

⁷⁷ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7891, para. 15.

⁷⁸ See generally R. Preston McAfee & John McMillan, *Auctions and Bidding*, 25 J. Econ. Literature 699, 701-703 (1987), <http://vita.mcafee.cc/PDF/JEL.pdf>.

⁷⁹ In the case of tied bids, a winning bidder may end up paying the tied bid amount. For the 833 Auction, we defer to the pre-auction process, the detailed procedures for bid processing and payment determination, including, among other things, how winners and payments will be determined in the case of tied bids and what to do if a toll free number receives only one bid in the single round of bidding.

⁸⁰ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7891, para. 16.

the winner (i.e., the bidder with the highest bid) is determined by the second highest bid and does not depend on the exact amount of the winning bidder's own bid. This payment rule results in the winning bidder essentially receiving what it might view as a "surplus," i.e., the difference between its own bid and the second highest bid. A Vickrey auction thus encourages bidders to bid the true maximum they are willing to pay, while at the same time efficiently assigns the numbers to the bidders who have the highest valuations for the numbers.⁸¹

32. We conclude that the 833 Auction should use a single round rather than multiple rounds to keep the auction process for this experiment as simple and cost-effective as possible. As the Commission observed in the *Toll Free Assignment NPRM*, a single round, sealed-bid auction is relatively easy for both the auctioneer (to implement) and participants (to participate in).⁸² In addition, a single round auction will be completed more quickly than a multi-round auction,⁸³ and comes at a lower cost to the auctioneer and the participants. In fact, we do not believe that auction participants will be required to incur substantial time or expense to prepare for the auction. They have already determined which 833 numbers to reserve, thus spending some time and expense in reaching those determinations; the incremental effort on their part to participate in the auction is unlikely to impose an additional time or cost burden on them. And because of the lower cost of a single round Vickrey auction, we reject commenters' concerns that the costs to implement and run the auction will be excessive.⁸⁴

33. We also reject the notion that a Vickrey single round, sealed-bid auction will result in a scenario where inexperienced bidders will overbid and be unwilling or unable to pay the winning bid.⁸⁵ A second-price auction encourages bidders to bid the true maximum that they are willing to pay, knowing they will not actually pay more than needed to outbid the second highest bidder. Also, we note that each bid is a binding commitment, so bidders know in advance that they should only submit bids that they are willing to pay.⁸⁶ In addition, as discussed further below, entities interested in participating in an auction generally have to submit some form of financial security in order to participate.⁸⁷ Further, consistent with the Commission's standard practice, we will ensure that prospective auction participants have an opportunity to become fully informed about the auction through public outreach and education, including online tutorials about the application and bidding processes.

34. *Alternative Auction Methodologies.* Although the Commission sought comment on alternative auction methodologies to consider for assigning the mutually exclusive 833 numbers, we

⁸¹ *Id.* As a first approximation, it is likely that individual valuations for toll free numbers are not dependent on another's valuation, at least beyond a broker's desire to purchase for resale. *See id.* at 7903-04, Appx. A at paras. 2-4. Moreover, to the extent that this is not the case, auction theory does not provide unambiguous direction as to optimal auction design. Thus, for our opening experiment in assigning toll free numbers via competitive bidding, we adopt the simple and transparent Vickrey auction.

⁸² *Id.* at 7890, para. 13. *See also* ATFP Comments at 4 (arguing that the single round, sealed-bid Vickrey auction is a suitable format, as it requires minimum involvement and can be tabulated by a trusted third party); Verizon Comments at 5 (Vickrey sealed-bid auction—more than an open or multiple round auction—would appear to enable RespOrgs and their customers to obtain numbers expeditiously and predictably).

⁸³ ATFP Comments at 4; Somos Comments at 5; Verizon Comments at 5.

⁸⁴ *See e.g.*, 800 Response Comments at 7 (costs to educate public will be costly); Conduit Consulting Comments at 1 (auction process is costly).

⁸⁵ CSF Corp. Comments at 4.

⁸⁶ This is true even in a Vickrey auction, where the winning bidder will only pay the second highest bid, because the second highest bid price may be equal to (in case of a tie) or just slightly less than the winning bidder's submitted bid. As Power Auction notes, "[i]t is important for bids to be binding commitments, because the lack of binding commitments could cause the auction process to be manipulated or to unravel." Power Auctions Comments at 7-8.

⁸⁷ Power Auctions Comments at 7-8. *See infra* Section III.B.2.d.

decline to employ any such methodologies for the 833 Auction.⁸⁸ One commenter suggested that we use what it calls an “open” auction, specifically “a simultaneous ascending clock auction with multiple independent clocks.”⁸⁹ While this type of auction has certain advantages over a single round, sealed-bid, Vickrey auction,⁹⁰ we conclude that these advantages do not justify the additional complexity and expense of a multiple round auction at this time. While the Commission uses multiple round auctions and will continue to do so, the 833 Auction will be the Commission’s first auction of the rights to use toll free numbers, and our intent for this experiment is to gather data to help inform future toll free assignment decisions while minimizing the complexity and cost to the Commission, auctioneer, and participants during the experiment.⁹¹ We also have limited information on which to base any estimate of the dollar amounts potential subscribers are willing to bid. Also, the relatively modest nature of the items to be auctioned—the rights to use toll free numbers, as opposed to spectrum licenses or Universal Service Fund support—seems at this juncture to warrant a less complex and costly type of auction. Thus, we do not want to create a more complex and costly auction than necessary at this early stage.

35. One commenter argues that a single round, sealed-bid Vickrey auction limits the ability of a bidder to develop a bidding strategy involving substitute numbers vis-à-vis an “open” auction.⁹² That commenter does not, however, provide a basis for its position that bidders in the 833 Auction will have a need for such a complex auction, or how such a need outweighs the impact to cost and complexity for this experimental auction. Further, unlike other auctions the Commission has conducted, such as auctions for spectrum and Universal Service Fund support, where some items may be substitutable, this auction allocates items for which managing bids across substitutes is less important. Similarly, there are important complementarities in bids for spectrum and Universal Service Fund support which we have no reason to believe apply to the toll free number market.

36. More specifically, the Commission has historically used multiple round bidding as the primary auction methodology in spectrum auctions.⁹³ When implementing its spectrum auction authority, the Commission found that multiple round auctions provide needed information about the value of substitutable and complementary licenses and allows participants the flexibility to pursue back-up strategies during an auction, allowing the spectrum to go to its highest value use.⁹⁴ The Commission recognized, however, that while multiple round auctions are preferable, if the value of the licenses or the number of bidders would be so low that the administrative costs of a multiple round auction may exceed its benefits, other auction methods are available. Our spectrum auctions, generally, involve many entities pursuing complex strategies weighing the cost of various quantities of spectrum within and between markets. Similarly, in competitive bidding for Universal Service Fund support, many participants are

⁸⁸ For example, the *Toll Free Assignment NPRM* sought comment on a pay-your-bid auction, whereby the highest bidder wins and pays its bid, and an open auction, such as a simultaneous multi-round auction used by the Commission for our spectrum auctions. *Toll Free Assignment NPRM*, 32 FCC Rcd at 7892, paras. 18-20.

⁸⁹ Power Auctions Comments at 2-5.

⁹⁰ Power Auctions enumerates several advantages of an “open” auction, including (1) permitting bidders the opportunity of price discovery; (2) permitting bidders more control over the money spent on winning bids; (3) permitting bidders some ability to handle bids for numbers that may be viewed as substitutes; (4) maintaining privacy of auction participants’ bids; and (5) potentially resulting in higher auction revenues and more efficient results. Power Auctions Comments at 2-5.

⁹¹ See, e.g., Daniel Lyons Comments, Attach. at 4 (“The single-round auction is much cheaper than a traditional multi-round auction, meaning the administrative costs of the auction are minimal.”).

⁹² Power Auctions Comment at 3.

⁹³ See Auctions Summary, <https://www.fcc.gov/wireless/auctions/auctions-summary> (last visited Sept. 21, 2018).

⁹⁴ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2366, paras. 106-111 (1994).

contemplating multiple markets that they are willing to serve based on the price of the subsidy.⁹⁵ In the case of toll free numbers, there is limited information in the record that one number is a substitute for another or on how bidders will view the relative values of the available numbers. The Commission hopes to obtain such information through this auction.

37. In sum, because the Vickrey single round, sealed-bid auction should demand fewer resources from the Commission, the auctioneer, and the auction participants while still yielding an efficient allocation of toll free numbers, we believe it will help achieve our objectives for this experiment.⁹⁶ We note, however, that we are not intending to foreclose the use of an “open” auction—or another auction methodology—in any future toll free number auctions.⁹⁷ We expect that the Bureau’s report will address the success of the Vickrey single round, sealed-bid auction methodology, and compare it to alternative methodologies.

b. Auction Eligibility

38. Deciding which parties can participate in an auction is an integral part of the process. Although we generally require applicants for our auctions to demonstrate certain qualifications consistent with the regulatory objectives of a particular auction, it is also true that the broader the participation, the more likely it is that 833 numbers will be assigned to the highest-valuing bidders. For the 833 Auction, we will allow any party interested in obtaining an 833 number (potential subscriber) to participate directly in the auction or indirectly through a RespOrg. We also will not limit the 833 Auction to only those RespOrgs that participated in the 833 pre-code opening; any RespOrg may participate. We believe allowing all interested parties to participate directly in the auction will provide them with greater flexibility and control to accurately express their level of interest and will allow the Commission to glean as much information from the experiment as possible to better inform future toll free code opening assignments.

39. *833 Auction Not Limited to RespOrgs.* We will permit any potential subscriber to participate directly in the 833 Auction or indirectly through a RespOrg.⁹⁸ In the *Toll Free Assignment NPRM*, the Commission proposed to permit only RespOrgs to participate in the proposed auction, based on RespOrgs’ role as manager and administrator of toll free records in the Toll Free Database.⁹⁹ After reviewing the record, we conclude that allowing potential subscribers to directly participate will likely increase the efficiency of the auction while also addressing possible conflicts of interest between RespOrgs and potential subscribers. We agree with 800 Response, who argues that allowing potential subscribers to participate will minimize opportunities for participants to engage in undesirable and/or anticompetitive strategic behavior that could occur if a RespOrg and one or more of its subscribers were

⁹⁵ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5978-79 para. 88 (2016); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1493, para. 199 (2018).

⁹⁶ *Id.*

⁹⁷ To the contrary, we recognize that there are cases where an open auction may perform better than a sealed-bid auction. See *Toll Free Assignment NPRM*, 32 FCC Rcd at 7892, para. 19, Appx. A at para. 4; see also Power Auctions Comments at 2-5.

⁹⁸ A toll free “subscriber,” per the rule revision we adopt today, is “The entity that has been assigned a toll free number.” See *infra* Appx. A. Because we do not intend to limit auction participation to entities that already have been assigned numbers, we establish that “potential subscribers”—any parties interested in subscribing to a toll free number—may participate in the 833 Auction. As auction participants, these parties will be obligated to comply with the Auctions Procedures Public Notice in this proceeding.

⁹⁹ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7892-93, para. 21. The Commission also recognized “the importance of RespOrgs as market makers” and noted that RespOrgs “may have strengths in maximizing the valuation of certain numbers, for example, by piecing together geographic coalitions of subscribers who may be unable to coordinate themselves.” *Id.*

interested in the same 833 numbers.¹⁰⁰ Therefore, we find it appropriate to allow potential subscribers to act on their own behalf and represent their own interests in the auction.¹⁰¹ We stress that if a potential subscriber directly participates in and is assigned a number via the 833 Auction, it must still work with a RespOrg after the auction to reserve the number in the Toll Free Database in accordance with our rules.¹⁰²

40. We do not go so far as to remove RespOrgs from the process of acquiring toll free numbers in the 833 Auction, as one commenter suggests.¹⁰³ Because subscribers are familiar with working with RespOrgs to acquire toll free numbers and may prefer to continue to take advantage of RespOrg expertise here, we conclude that we should allow subscribers the choice of working with a RespOrg in the 833 Auction.

41. Some commenters oppose permitting potential subscribers to participate in the auction. For example, Somos claims that allowing subscribers to participate “would introduce unnecessary and potentially costly administrative problems”¹⁰⁴ and Power Auctions advocates allowing only RespOrgs to participate since they can maximize valuations of certain numbers and including subscribers would increase the costs of running the auction.¹⁰⁵ On the other hand, one commenter advocates excluding RespOrgs completely, and allowing only end-user customers to participate.¹⁰⁶ We recognize the value added by RespOrgs as “market makers,”¹⁰⁷ but find that allowing potential subscribers to participate in the auction will likely increase the efficiency of the auction, by increasing competition and reducing the likelihood of tacit collusion and other undesirable strategic behavior that can occur when there are very few auction participants.¹⁰⁸ Although we recognize there may be additional cost in auction overhead by allowing more participants, we believe that the benefits to auction efficiency created by expanding the pool of potential participants identified above are worth the minimal expense in determining whether the additional participants are qualified to bid in the auction. And by allowing potential subscribers to bid on their own, we lower administrative costs for participants who choose not to place a bid through a RespOrg.

42. *Maximizing Auction Participation.* We will not otherwise limit the number of participants in the auction, such as by limiting RespOrg eligibility to participate in the 833 Auction only to those RespOrgs that participated in the 833 pre-code opening process. Permitting the maximum

¹⁰⁰ See 800 Response Information Services LLC Reply at 3-4. If a RespOrg and one or more of its subscribers do not have an interest in the same 833 numbers, permitting RespOrgs to participate in the auction gives subscribers to option to have their RespOrgs bid on their behalf.

¹⁰¹ Potential subscribers also have the option to become a RespOrg by meeting various requirements for certification. By formally allowing potential subscribers the option to participate directly, non-RespOrg participants will not need to spend resources to become a RespOrg if they are concerned that current RespOrgs would not fully represent their interests.

¹⁰² See 47 CFR § 52.101.

¹⁰³ See 800 Response Information Services LLC Reply at 3-4.

¹⁰⁴ Somos Comments at 3.

¹⁰⁵ Power Auctions Comments at 6-7 (arguing that increased participation would result in increased “overhead in reviewing applications to participate in the auction, processing upfront payments, providing login credentials to the auction system, training bidders, collection payments from winning bidders after the auction, etc.”). See also ATFP Comments at 8 (arguing that only RespOrgs can vet bidders and minimize fraud, and will result in “uniform and efficient” bid collection since RespOrgs will consolidate and submit bids in one file).

¹⁰⁶ 800 Response Information Service LLC Reply at 1-4.

¹⁰⁷ As the Commission recognized in the *Toll Free Assignment NPRM*, RespOrgs “may have strengths in maximizing the valuation of certain numbers, for example, by piecing together geographic coalitions of subscribers who may be unable to coordinate themselves.” *Toll Free Assignment NPRM*, 32 FCC Rcd at 7892-93, para. 21.

¹⁰⁸ 800 Response Reply at 2-3.

number of eligible participants to bid in the 833 Auction ensures a robust auction and results in the bidders with the highest willingness to pay being assigned a number, which is in the public interest. The inclusion of all RespOrgs and potential subscribers in the pool of eligible participants will also provide the Commission with greater information about the value of toll free numbers, increasing the value of the experiment. In furtherance of this goal, the Commission, along with Somos in its role as auctioneer, will undertake outreach efforts to promote maximum participation among RespOrgs and potential subscribers.

c. Application Process

43. In Commission auctions, interested parties must disclose certain information and make certain certifications in an application or series of applications.¹⁰⁹ This information helps promote auction transparency and integrity and assists us in monitoring compliance with our auction rules and procedures, including, for example, the prohibition against certain communications. We find it is necessary to qualify entities to participate in the auction, and therefore require interested entities to submit a short-form application to participate in the auction. The information and certification required in the short-form application, along with an upfront payment, will help determine if an applicant is qualified to bid in the 833 Auction. We will not require applicants to submit a long-form application after the conclusion of this auction, given the lack of need to verify winning bidders' qualifications in this context and to limit the administrative burden on bidders, the auctioneer, and the Commission.

(i) Short-Form Application Requirements

44. We establish here some basic requirements and limitations regarding applications to participate. We expect that each entity interested in bidding in the 833 Auction will be required to disclose certain information and make certain certifications to promote compliance with the framework we outline here and protect auction integrity. These submissions will promote the transparency and efficiency of the auction and reduce the instances of conflicts of interest and the likelihood of undesirable and/or anticompetitive strategic behavior by participants.

45. *A Potential Subscriber May Participate Through Only a Single Auction Applicant and Submit a Single Application.* Potential subscribers can participate in the 833 Auction through only a single auction applicant. In particular, a potential subscriber may not engage multiple applicants to bid for a particular number in which it is interested. This prohibition assures a level playing field for all bidders and prevents distortions in the information on bidder interests, by assuring that each auction participant has at most one bid per number in the single round.

46. We likewise prohibit a single party, or multiple parties with a controlling interest in common, from becoming qualified to bid based on multiple applications.¹¹⁰ We employ this same prohibition in spectrum auctions to ensure that auction participants bid in a straightforward manner.¹¹¹ We believe that this type of restriction is warranted in the 833 Auction and will address concerns raised in the record regarding the potential for undesirable strategic bidding behavior, which could harm other bidders.¹¹²

¹⁰⁹ In the Commission auctions, we typically have a two-stage application filing process. In the pre-auction "short-form" application, a potential bidder will need to establish its eligibility to participate, providing, among other things, basic ownership information. After the auction, the Commission conducts a more extensive review of the winning bidders' qualifications to receive support through "long-form" applications.

¹¹⁰ While we will seek comment and decide how to define parties with common controlling interests in our pre-auction process, we anticipate utilizing the Commission's definitions adopted for similar purposes in our spectrum auctions. See, e.g., 47 CFR § 1.2105(a)(4)(i).

¹¹¹ *Updating Part 1 Competitive Bidding Rules*, FCC 15-80, Report and Order, 30 FCC Rcd 7493, 7579-81, paras. 205-208 (2015).

¹¹² Verizon Comments at 4.

47. *A RespOrg Can Apply on Behalf of Only a Single Potential Subscriber (Including Itself) Per Number.* We recognize that allowing RespOrgs to serve as bidders for potential subscribers of toll free numbers may present the opportunity for certain auction participants to have more information about the competition for certain numbers. Such asymmetric information could be used in ways that adversely affect some potential subscribers. To mitigate the potential anticompetitive effects of RespOrgs bidding for potential subscribers, we will limit a RespOrg to representing a single potential subscriber (including itself) for the rights to use a particular number.¹¹³

48. *Disclosures and Certifications.* To promote transparency as well as compliance with the limitations discussed above, we establish certain general requirements for applicant disclosures and certifications. Specifically, we expect that each auction participant—whether a potential subscriber or a RespOrg serving as a bidding agent—will be required to certify, as applicable, that it is not bidding on behalf of multiple interested parties (including itself) for the same toll free numbers or that it is only bidding through one entity for a given number.¹¹⁴ To enforce this prohibition, we expect that applicants will need to disclose the party on whose behalf it is bidding, for each toll free number that it selects. To enforce the prohibition, and to allow entities to comply with the prohibition on certain communications discussed below, we also expect that any entity wishing to participate in the 833 Auction will have to fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more.¹¹⁵ We also will require applicants to provide additional information and make additional certifications in the application, as may be found in the pre-auction process to be necessary to implement our decisions in this Report and Order. By requiring these certifications and disclosures, we guard against potential conflicts of interest between a RespOrg and its customer subscriber(s), between a RespOrg's customer subscribers, and between RespOrgs with overlapping controlling interests seeking the rights to use the same toll free numbers. Moreover, such actions will help implement our overriding principle that each entity should participate through only one bidder, thus encouraging sincere bidding and enhancing the integrity of the auction.

(ii) Procedures for Processing Pre-Auction Applications

49. For the 833 Auction, we expect that applications to participate in the auction will be processed in a manner similar to applications to participate in spectrum license auctions. Specifically, no application will be accepted if, by the initial deadline, the applicant has failed to make the required certifications, e.g., no additional applications will be accepted after the initial deadline.¹¹⁶ Moreover, applicants will be afforded an opportunity to cure any identified minor defects after an initial review of the application.¹¹⁷ Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the

¹¹³ We note that, under a different auction design (e.g., in a multiple round auction) or with different eligibility requirements, a different limitation may be appropriate to help ensure that RespOrgs fully represent subscriber interests, but, for the 833 Auction, we find this limitation to be appropriate.

¹¹⁴ A RespOrg can bid on behalf of multiple subscribers, as long as the subscribers it represents, as well as itself, are not bidding on the rights to use the same number(s). We will also require the applicants that have overlapping non-controlling interests to certify, during the application process, that they have established internal control procedures to preclude any person acting on behalf of an applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. See *Updating Part 1 Competitive Bidding Rules*, 30 FCC Rcd at 7580-81, para. 207.

¹¹⁵ See 47 CFR § 1.2112(a).

¹¹⁶ See 47 CFR § 1.2105(a), (b)(1). Put differently, no additional applications will be accepted after the deadline.

¹¹⁷ See 47 CFR § 1.2105(b)(2).

ownership of the applicant that constitute an assignment or change of control of the applicant,¹¹⁸ or the certifications required in the application. If an applicant fails to make necessary corrections before a resubmission deadline, the applicant would be found not qualified to bid.¹¹⁹

d. Other Competitive Bidding Considerations for the 833 Auction

50. *Prohibition on Certain Communications.* For spectrum and universal service auctions, the Commission has adopted rules prohibiting an applicant from communicating certain auction-related information to another applicant from the auction application filing deadline until the post-auction deadline for winning bidders to file long-form applications.¹²⁰ This prohibition on certain communications is intended to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior.¹²¹ While we believe the 833 Auction should have a similar prohibition on certain communications, we defer until the pre-auction process the details of the prohibition on certain communications, but absent unique factors that may be applicable to the 833 Auction we expect the prohibition to be generally consistent with our rule in spectrum auctions.¹²²

51. *Availability of Auction-Related Information During and After the Auction Process.* It is our objective that the 833 Auction be transparent and objective. Consistent with that objective, we conclude that the procedures to be established in the pre-auction process should address what auction-related information will be available to bidders and to the public during the auction process, and when any information withheld during the auction will be made publicly available.

52. *Upfront Payments and Default Payments.* Entities that are interested in participating in the 833 Auction will be required to demonstrate an ability to pay for the rights to use the numbers for which they intend to bid by submitting an upfront payment.¹²³ Moreover, since bids are binding commitments, if a bidder fails to make full payment on its bid, or otherwise defaults, it should be subject to a default payment. We defer to the pre-auction process what the upfront payments and default payments for the 833 Auction should be, but we generally expect the approach to be modeled on those used in the Commission's spectrum auctions.¹²⁴

¹¹⁸ Pro forma transfers and assignments have not generally been considered to be major modifications. *See, e.g., Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, WT Docket No. 98-20, 13 FCC Rcd 21027, 21060, para. 72 (1998).

¹¹⁹ *See* 47 CFR § 1.2105(b)(3).

¹²⁰ *See* 47 CFR §§ 1.2105(c), 1.21002(b). In these rules, “applicant” is defined broadly to include “all controlling interest in the entity submitting a short-form application to participate in an auction . . . as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.” *Id.* at §§ 1.2105(c)(5)(i), 1.21002(a).

¹²¹ *See Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6736, para. 397 (2014) (citing *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 9 FCC Rcd at 2386-88, paras. 221, 225 (1994)).

¹²² *See* 47 CFR § 1.2105(c). Regardless of the procedures ultimately decided upon for the 833 Auction, participants will be subject to antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. *See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869, para. 64 n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”).

¹²³ *See generally* 47 CFR § 1.2106; *see also* Power Auctions Comments at 7-8.

¹²⁴ *See* 47 CFR § 1.2106.

53. *Bidding Credits.* We will not adopt bidding credits for the 833 Auction. We recognize that bidding credits can provide economic opportunity for a wide range of participants.¹²⁵ Given the experimental nature of this auction, however, we conclude bidding credits are not appropriate at this time. No commenters who advocate we incorporate bidding credits in the 833 Auction provide specifics about the size standards or size of the bidding credits that might be employed, and we have no prior basis for determining the appropriate amount of any such bidding credit. We further do not wish to confuse the lessons we take away from this experiment by including bidding credits, which would influence bidder behavior. Instead, we will consider all of the data collected from the 833 Auction to determine if bidding credits should be offered in any possible toll free number auctions in the future.

54. *Reserve Prices.* We also decline to establish reserve prices for the 833 Auction.¹²⁶ Most commenters oppose establishing reserve prices, arguing that reserves may discourage entities from bidding.¹²⁷ Our goal for this auction is to gain as much information as possible about the effectiveness of a market-based approach to toll free number assignment, and we are convinced by the record that a reserve price may discourage auction participation and, thereby, decrease the amount of information we gain from the auction.¹²⁸ And because this is our first time using competitive bidding to assign toll free numbers, we have a limited basis on which to establish a reasonable and efficient reserve price.

55. *Bidding on Multiple Numbers.* Consistent with our proposal in the *Toll Free Assignment NPRM*,¹²⁹ we will not limit the overall quantity of toll free numbers the rights to which can be acquired by an auction participant. Establishing such a limit could hamper the efficiency of the auction by constraining bidders who hold the highest valuations. Moreover, we wish to obtain as much information as possible from this experiment and believe any such constraint would limit the information derived from this experiment.

56. Similarly, we find it is unnecessary to permit package bidding (i.e., single bids for the rights to groups of numbers) in the experiment. As the Commission stated in the *Toll Free Assignment NPRM*,¹³⁰ though it is likely some bidders will demand the rights to multiple numbers, we do not believe valuation synergies warrant the additional complexity that package bidding brings. We desire to minimize the auctioneer's development costs for the auction interface and to simplify the bidding process for the auction participants.¹³¹ We expect the Bureau's post-auction report to address the auction's effectiveness, and to recommend whether any of the measures we have declined to adopt in the Report and Order—including package bidding—could be useful in deciding on future toll free assignment methods.

57. *Post-Auction Winning Bidder Public Notice.* Once the auction has been completed, we

¹²⁵ See ACTIS Comments at 3-5 (urging the Commission to adopt bidding credits so that smaller RespOrgs in the Caribbean region can compete better in any toll free number auction); CenturyLink Comments at 4 (arguing that Commission should consider bidding credits to avoid disadvantaging smaller participants); 800 Response Information Services LLC Reply at 5-6.

¹²⁶ See *Toll Free Assignment NPRM*, 32 FCC Rcd at 7891-92, para. 17. By "reserve price," we refer to a minimum amount that must be reached in order for a number to be assigned after the auction closes.

¹²⁷ See CSF Corp. Comments at 4; Verizon Comments at 5 (asserting that small business customers in particular may be unwilling or unable to pay a reserve price); 800 Response Information Services LLC Reply, Attach. at 4. But see Power Auctions Comments at 5-6 (arguing that reserve prices may be useful since the level of interest in mutually exclusive toll free numbers varies widely among RespOrgs).

¹²⁸ See CSF Corp. Comments at 4.

¹²⁹ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7893, para. 23.

¹³⁰ *Id.* at 7890-91, para. 14.

¹³¹ See ATRP Comments at 7 (arguing that package bidding would disadvantage small businesses interested in only one number).

will release a public notice identifying the winning bidders and establishing the deadline for making final payment for winning bids. This public notice will also explain how unsold inventory—numbers that received no bids—will be assigned after the 833 Auction. As we have explained, any potential subscriber that participates directly in the auction and wins the rights to a number must still work through a RespOrg after the auction to reserve the number in the Toll Free Database in accordance with our rules.¹³²

3. Somos as Auctioneer for the 833 Auction

58. We establish Somos, the Toll Free Numbering Administrator, as the auctioneer for the 833 Auction. We believe this role is commensurate with its present statutory and regulatory duties and its responsibilities. The Commission established Somos as the Toll Free Numbering Administrator in the 2013 *Toll Free Governance Order*.¹³³ There, we determined that Somos met the impartiality requirement of section 251(e)(1) of the Act—codified in section 52.12 of our rules¹³⁴—and was “eligible to serve as neutral SMS administrator.”¹³⁵ As the auctioneer for the 833 Auction, Somos shall continue to implement impartially toll free number assignments, consistent with the Act and our implementing rules.

59. In its role as auctioneer, we require Somos to provide the infrastructure and software for online bidding and carry out other activities necessary to implement the auction. These activities include performing bidder education and other outreach; accepting and reviewing applications to participate in the auction; accepting upfront payments; announcing qualified bidders and those not qualified to bid; accepting bids during a single round of bidding; accepting final payments for winning bids and distributing refunds for any upfront payments not applied to winning bids; activating in the toll free database the numbers won at auction and for which final payment has been made; and undertaking any other tasks in furtherance of the 833 Auction that the Commission deems appropriate and as elaborated in the Auction Procedures Public Notice. The Commission will maintain oversight of Somos’s implementation of the 833 Auction and will re-direct it as necessary to most effectively execute the 833 Auction.¹³⁶

60. One commenter posits that the present Toll Free Numbering Administrator should not serve as the toll free number auctioneer because Somos “has no experience in conducting auctions” and it “would be called upon to develop entirely new [auction] processes.”¹³⁷ We disagree. Somos has asserted that it is fully capable of executing the Commission’s proposed auction,¹³⁸ and we have no basis on which to question its assertion. Moreover, given the considerable expertise in number assignment and administration that Somos has gained since the Commission formally designated it as the Toll Free Numbering Administrator,¹³⁹ we are confident that Somos will perform its auctioneer duties in accordance with the procedures established by the Auction Procedures Public Notice.¹⁴⁰

¹³² See 47 CFR § 52.101.

¹³³ *Toll Free Service Access Codes*, Order, 28 FCC Rcd 15328, 15328, para. 1 (2013) (*Toll Free Governance Order*).

¹³⁴ See generally *Toll Free Governance Order*, 28 FCC Rcd at 15344-46, paras. 41-47 (applying 47 CFR § 52.12 criteria of “Affiliate Relationship,” “Debt or Revenues from a Provider,” “Commission Discretion to Consider Undue Influence”); 47 CFR § 52.12.

¹³⁵ *Toll Free Governance Order*, 28 FCC Rcd at 15343, para. 41.

¹³⁶ To maintain oversight, the Commission will review tariff filings, see *infra* para. 73, issue specific instruction in the Auction Procedures Public Notice, and direct Somos under our broad authority over the Toll Free Numbering Administrator.

¹³⁷ 800 Response Comments at 8.

¹³⁸ Somos Comments at 2.

¹³⁹ See generally, e.g., *Toll Free Governance Order*, 28 FCC Rcd 15328 (establishing SMS/800, later known as Somos, Inc., as the toll free administrator, subject to tariff); *Toll Free Service Access Codes*, Order, 31 FCC Rcd

(continued....)

61. We also agree with Somos that it is critical “to maintain continuity and stability in TFN [toll free number] administration.”¹⁴¹ In contrast, were we to establish an independent auctioneer, the independent auctioneer would have to first coordinate with Somos to verify that the numbers available in the 833 Auction are indeed available.¹⁴² The independent auctioneer would then have to direct Somos to assign the number to the winning bidder. We find this step in the process unnecessary as Somos is capable to serve as auctioneer in accord with the specific and direct instruction to be set forth in the Auction Procedures Public Notice.

62. While we appreciate the novelty of our experiment in using competitive bidding in the toll free context, the Commission itself has a vast amount of experience in conducting auctions in other contexts.¹⁴³ We will oversee Somos’s implementation of the 833 Auction, along with our general oversight of numbering, to alleviate any concerns about auction execution. Moreover, a single-round, sealed-bid auction should not require complex software or administration.

63. For these reasons, we direct Somos to serve as the auctioneer of the 833 Auction. In the event Somos seeks to add outside personnel to assist with the auction in any way, it may do so provided that it retains the overall administrative responsibility and neutrality.¹⁴⁴ We further direct Somos to obtain an independent audit of the 833 Auction, including Somos’s performance as auctioneer, after completion of the auction.¹⁴⁵

64. In designating Somos as the auctioneer of the 833 Auction, we do not foreclose the Commission’s ability to assign this role to a different entity, or through a different method, such as a competitive process, in a future toll free number auction. In its report on the outcomes of the 833 Auction, we direct the Bureau to evaluate Somos’ performance as the auctioneer, including its technical execution and cost-effectiveness in conducting the auction. The results of the 833 Auction, including its costs and the degree of its financial success, ought to inform the Commission’s method for assigning the role of auctioneer in future toll free number auctions.

65. *Auction Information.* To allow the Commission to make a fair and accurate assessment of the results and consequences of the 833 Auction, we require Somos to retain and make available to the Commission all data and information about the auction and its administration, gathered before, during, and after the auction. Such information includes, but is not limited to, information on the following: winning and losing bids, bidders, administrative costs (including detailed costs to design the auction user interface, auction platform, and software to evaluate the auction results), and post-auction secondary

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6828, 6829-30 paras. 4-5 (WCB 2016) (waiving first-come, first-served rule for 800 code numbers pursuant to Somos petition concerned with number exhaust).

¹⁴⁰ See generally Somos Comments at 2.

¹⁴¹ *Id.*

¹⁴² See *Toll Free Service Access Codes*, 12 FCC Rcd at 11168, para. 7.

¹⁴³ See generally, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014); Fed. Comm’n’s Comm’n, *Broadcast Incentive Auction and Post-Auction Transition*, <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions>.

¹⁴⁴ Section 251(e) requires the Commission to “create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.” See 47 U.S.C. § 251(e)(1).

¹⁴⁵ In the event that the Bureau determines, and announces in a Public Notice, that the costs of conducting such an audit are unlikely to exceed the benefits—for example, because of low auction revenue—Somos need not obtain an audit.

market transfers.¹⁴⁶ We also require Somos to make available to the Commission information on 833 numbers not included in the auction for comparison purposes. This data will enable us to get a complete picture of the viability of the 833 Auction and on competitive bidding as an assignment method for future toll free code openings.

4. 833 Auction Proceeds

66. We will use any net positive proceeds from the 833 Auction to defray the costs of administering toll free numbering incurred by the Toll Free Numbering Administrator¹⁴⁷ (i.e., costs beyond conducting the auction) and, potentially, the North American Numbering Plan Administrator (NANPA).¹⁴⁸ By “net positive proceeds,” we mean any amount by which revenues from the auction exceed the costs of conducting the auction.¹⁴⁹ Applying net positive proceeds in this manner is consistent with our authority in section 251(e) to administer numbering, and its requirement that the costs of administration be borne by carriers on a competitively neutral basis.¹⁵⁰ As discussed in the *Toll Free Assignment NPRM*, it will benefit all toll free subscribers and RespOrgs, as well as potentially all stakeholders in the 20 countries that are members of the NANP.¹⁵¹

67. *Disbursement of 833 Auction Revenues That Exceed Somos’s Auction Costs.* We conclude that net positive proceeds from the 833 Auction should be used to defray toll free numbering administration costs. We establish a methodology that will benefit Toll Free Numbering Administrator users while tempering resulting year-over-year change of administrative rates and charges. We therefore tie our disbursement to the ratio between net positive proceeds and Somos’s revenue requirements. In the present tariff year, Somos’s revenue requirement for toll free numbering administration services is \$56.9 million.¹⁵² If net positive proceeds are less than five percent of Somos’s then-current annual revenue requirement,¹⁵³ then the net positive proceeds should be used only to defray toll free numbering

¹⁴⁶ Per the exception we establish today, the secondary market is limited to numbers assigned via competitive bidding. See *infra* section III.C. The mutually exclusive numbers in the 833 code assigned in the 833 Auction will therefore be eligible for secondary market transfers.

¹⁴⁷ Somos is a not-for-profit corporation that provides the Toll Free Numbering Administrator function pursuant to FCC tariff, subject to section 61.38 of the Commission’s rules. 47 CFR § 61.38. Somos must file annual tariff revisions pursuant to the applicable part 61 rules for a dominant carrier, subject to the tariff requirements and enforcement of the Commission pursuant to the Act and the Commission’s rules. *SMS/800 Order*, 28 FCC Rcd at 15342, paras. 37-38; see also generally Somos, Inc., Tariff F.C.C. No. 1 (2018), <https://s3.amazonaws.com/files-prod.somos.com/documents/SMS800FunctionsTariff.pdf> (Toll Free Tariff). Previous tariff information is available at <https://apps.fcc.gov/etfs/public/tariff.action?idTariff=787>. Tariff modifications must be filed each January 31 (following the close of its fiscal year, which is the calendar year) updating the rates for its services, effective during the next tariff year that begins in February. Each such filing must contain an updated cost of service study pursuant to section 61.38. *Id.* Based upon that cost study, Somos’s rates and charges are adjusted to recover those forecasted costs over the ensuing tariff year.

¹⁴⁸ The NANPA is currently Neustar, Inc., <https://www.nationalnanpa.com/>.

¹⁴⁹ Because Somos will also be developing and conducting the auction, the administrator’s costs for the auction will be paid first from auction revenues.

¹⁵⁰ 47 U.S.C. § 251(e)(1)-(2) (“The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”).

¹⁵¹ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7893-94, paras. 25-26. The NANP member countries are Anguilla, Antigua and Barbuda, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica,

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administration costs for the tariff period immediately following the close of the 833 Auction.¹⁵⁴ In the event that net positive proceeds exceed five percent of Somos's costs, then the net positive proceeds should be distributed evenly across five years for cost recovery under the tariff to minimize the impact on the administrative rates and charges. This approach avoids substantial year-over-year changes in administrative rates and charges, and allows RespOrgs and toll free subscribers to receive the cost reduction over an extended period if net positive proceeds are large enough to warrant.¹⁵⁵

68. If net positive proceeds from the 833 Auction are large enough that applying them to defray toll free numbering administration costs over five years would result in a greater than 25 percent decrease in the revenue requirement for the Toll Free Numbering Administrator over the five-year period, then the excess of net positive proceeds beyond that amount will be remitted to the Billing and Collection (B&C) Agent for the NANP¹⁵⁶ to be applied to defray the costs of NANP administration on behalf of its 20 member countries. We find that directing funds in excess of 25 percent for the benefit of the NANP strikes an appropriate balance, avoiding excessive fluctuations in the toll free tariff structure and benefitting both numbering administrations upon which toll free calling is dependent. The toll free numbers administered by the Toll Free Numbering Administrator are numbers within the NANP; it is therefore appropriate that such funds potentially go to defray the costs of administering the NANP, which are borne by the countries served by the Toll Free Numbering Administrator and the other NANP member countries. In the event proceeds remitted to the B&C Agent exceed five percent of NANPA costs, then the net positive proceeds should be distributed evenly by the B&C Agent across five fiscal years of the NANPA, to minimize the impact on the NANPA rates and charges. If proceeds remitted to the B&C Agent are large enough that applying them to defray NANPA costs over five years would result

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Dominican Republic, Grenada, Jamaica, Montserrat, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and the United States (including American Samoa, Puerto Rico, U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands). 47 CFR § 52.5(d). NANP toll free numbers are allotted to all member countries. The Toll Free Numbering Administrator administers the pool of toll free number resources allotted to Canada, Sint Maarten, and the United States. Other NANP member countries administer toll free numbering outside of the Toll Free Numbering Administrator and its Toll Free Database.

¹⁵² The revenue requirement to cover forecasted costs for toll free numbering administration (referenced in the Tariff as "SMS/800") services in the current tariff period, covering February 15, 2018 – February 14, 2019, is \$56,933,855. Toll Free Tariff, Transmittal No. 4, Table 4, Table 6 (effective Feb. 15, 2018).

¹⁵³ Somos would make this determination based on its cost study for the ensuing tariff year, with and without cost reduction by offset of auction proceeds. Should there be any further auction proceeds received after such determination (e.g., delayed payments accepted by the Commission), those proceeds will be applied/remitted in accordance with the manner set forth herein based on the then-cumulative amount of all auction proceeds from that auction, inclusive of such further auction proceeds.

¹⁵⁴ Auction proceeds amounting to five percent or less of the current annual revenue requirement applied to that single tariff year would likely have a *de minimis* effect on administrative rates and charges.

¹⁵⁵ The Commission has long sought to "smooth" the impact of its actions on telephony rates and charges. See *8YY Access Charge Reform*, WC Docket No. 18-156, Further Notice of Proposed Rulemaking, FCC 18-76, at 16-19, paras. 51-59 (June 8, 2018), 2018 WL 2932190 (providing three-year transition period for changes to toll free access charges); *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Third Order on Reconsideration and Notice of Proposed Rulemaking, FCC 18-19, at 32-33, paras. 69-71 (Mar. 23, 2018), 2018 WL 1452720 ("minimize unpredictable fluctuations in consumers' bills" by year-over-year carryover of excess funds "without causing a dramatic shift in the [USAC] quarterly contribution factor"); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17932-38, paras. 799-810 (2011) (adopting a multi-year transition plan for reform of intercarrier compensation to avoid sharp changes in rates and charges impacting the marketplace).

¹⁵⁶ The present B&C Agent is Welch LLP, <http://nanpfund.com/>. The B&C Agent will apply such funds prior to application of the various contribution factors and billing and collections processes.

in a greater than 25 percent decrease in the revenue requirement for the NANPA over the five-year period, then the excess of net positive proceeds beyond that amount will be distributed evenly by the B&C Agent across the next ten fiscal years of the NANPA.

69. *Recovery of 833 Auction Costs That Exceed Auction Revenues.* In the event the costs of the 833 Auction exceed its revenues, Somos may recover the resulting deficit in the same manner as other costs of toll free number administration: by incorporating them into the cost recovery mechanism in its tariff. These auction costs would be recovered along with all other allowable costs as part of the Toll Free Numbering Administrator's revenue requirement for the ensuing tariff year(s). This means that all RespOrgs and their underlying toll free subscribers will bear the auction's costs, just as they would share the benefit of any net auction proceeds. This approach is consistent with the cost-recovery system whereby all RespOrgs, and ultimately all toll free subscribers, bear the costs of numbering administration collectively.¹⁵⁷

70. We anticipate that the 833 Auction will benefit the entire toll-free industry by potentially lowering the monthly fees associated with toll free reservations.¹⁵⁸ Accordingly, we reject the suggestion that equitable and efficient distribution of numbers requires that any costs of the 833 Auction exceeding auction revenues should be imposed only upon auction winners, or auction participants, under "competitively neutral" and "cost-causer" approaches.¹⁵⁹ The 833 Auction is open to all RespOrgs and all potential subscribers. Moreover, the sharing of any net auction proceeds—or any auction deficit—does not of itself distort the toll free market in any fashion or favor one competitor in that marketplace over any other. As one commenter notes, consumers benefit directly from the use of toll free numbers, and "reducing the input costs proportionally across RespOrgs will benefit all participants at their level of participation, thereby not distorting the toll-free market. The method proposed by the FCC is an efficient and effective mechanism for achieving that goal."¹⁶⁰

71. Finally, for the reasons discussed above, if the deficit exceeds five percent of the forecasted cost of the Toll Free Numbering Administrator's services for the next tariff year, we will require the recovery of any deficit over the ensuing five years of cost recovery under the tariff. Such a deficit will be divided equally among each of those five years, and incorporated into the administrator's cost studies and revenue requirements for each of those years. By this approach, we seek to avoid or reduce any substantial increases or fluctuations in the Toll Free Number Administrator's rates and charges due to any deficit.

72. *International Considerations.* One commenter notes the international nature of the NANP and asks "what right does US, or its agencies, have to unilaterally benefit from an auction?"¹⁶¹ This concern is misplaced. The United States will not unilaterally benefit from the 833 Auction's proceeds. Rather, as explained, net positive proceeds will be used to defray the costs of toll free number administration, benefitting all RespOrgs (and ultimately toll free subscribers) in those countries served by

¹⁵⁷ Toll free numbering administration costs are recovered via the Toll Free Numbering Administrator's rates and charges, in the form of both transaction-specific fees, and monthly and other charges that are not tied to any specific transaction of number acquisition or change. Toll Free Tariff, Transmittal Nos. 4 and 5, Base Document pages 64-71 (effective Feb. 20, 2018).

¹⁵⁸ See e.g., Toll Free Tariff, §4.2(b) (monthly charge for non-dedicated access is \$27.27); §4.2(c) (the current customer record administration monthly charge is \$.1130).

¹⁵⁹ Verizon Comments at 8-9, citing *Toll Free Service Access Codes et al.*, Fifth Report and Order, 15 FCC Rcd 11939, paras. 35-37 (2000); see also 47 U.S.C. § 251(e)(2).

¹⁶⁰ See Coalition of Canadian RespOrgs Comments at 2-3.

¹⁶¹ Letter from Loren Stocker, Founder, AFTP, to Marlene H. Dortch, Secretary, FCC, CC Docket 95-155, at 2-3 (filed Sept. 1, 2017).

the Toll Free Numbering Administrator,¹⁶² and may also be used to defray the cost of NANP administration, benefitting all of its member countries. Even if the 833 Auction does not meet the 25 percent threshold, RespOrgs from these countries will benefit from lowered charges from the Toll Free Numbering Administrator. We note that a coalition of 10 Canadian RespOrgs, including major Canadian telecommunications service providers, supports our proposal to apply net auction proceeds to the Toll Free Numbering Administrator's administration costs.¹⁶³ Applying net auction proceeds as set forth herein is consistent with the way Somos applies RespOrg fee proceeds, and the NANPA collects fees, through the B&C Agent, from member countries and service providers.¹⁶⁴

73. *Somos Tariff Implications.* We direct Somos to reflect any net positive proceeds or deficit related to the 833 Auction in the section 61.38 cost support filed with the Toll Free Tariff. We have previously said that Somos must support the costs of its Toll Free Database administration as part of its tariff filing with the Commission.¹⁶⁵ The present Toll Free Tariff “contains regulations, rates and charges” applicable to administration of the Toll Free Database.¹⁶⁶ As explained above, any auction proceeds will be applied to decrease Toll Free Database administration costs.¹⁶⁷ This will allow Somos to lower certain of its charges, such as the monthly customer record administration charge.¹⁶⁸ On the other hand, any auction deficit, i.e., auction costs that exceed revenues from the auction, will be recovered via the tariff's cost recovery mechanism along with any other costs associated with administering the database. Inclusion of auction-related costs in the tariff's cost justification is necessary to show the impact of the 833 Auction on the tariffed charges to RespOrgs for use of the Toll Free Database.

5. Toll Free Numbers Used for Public Purposes

74. To ensure that the public interest is protected in the 833 Auction, we will set aside numbers in the 833 code that have been identified as mutually exclusive upon reasonable request by government entities and non-profit health and safety organizations.¹⁶⁹ In the *Toll Free Assignment NPRM*, the Commission sought comment on whether certain desirable toll free numbers should be set aside for use, without cost, by government agencies or by non-profit health, safety, education, or other non-profit public interest organizations.¹⁷⁰ After reviewing the record, we find that “[c]ertain desirable toll free numbers that promote health and safety should be set aside for use by government, without

¹⁶² The countries served by the Toll Free Numbering Administrator are Canada, Sint Maarten and the United States.

¹⁶³ See Coalition of Canadian RespOrgs Comments at 2 (“The Coalition of Canadian RespOrgs support the FCC’s recommendation that the proceeds of any toll-free number auction be used to offset the costs of toll-free number administration.”).

¹⁶⁴ See generally Toll Free Tariff, *see also* Somos Reply at 3 (describing generally Toll Free Numbering Administrator functions and cost recovery); *Wireline Competition Bureau Announces the Proposed North American Numbering Plan Administration Fund Size Estimate and Contribution Factor for October 2018 through September 2019*, CC Docket No. 92-237, Public Notice, DA 18-727 (WCB July 13, 2018), 2018 WL 3414790.; *2017 NANPA Annual Report* (Neustar, Inc.) available at https://www.nationalnanpa.com/reports/reports_annual.html at 2-3, 7-11, 22, 32 (describing functions, funding, and international aspects of the NANPA).

¹⁶⁵ *Provision of Access for 800 Service*, Order, 8 FCC Rcd 1423, 1426-27, paras. 28-29 (1993) (*1993 CompTel Declaratory Ruling*); *see also Toll Free Governance Order*, 28 FCC Rcd at 15334-35, para. 1.

¹⁶⁶ Toll Free Tariff §1.1.

¹⁶⁷ See *supra* Section III.B.4 (discussing application of auction proceeds).

¹⁶⁸ See e.g., Toll Free Tariff, §4.2 (Rates and Charges).

¹⁶⁹ Government entities include federal, state, local, and Tribal governments, and includes any such entities in all countries served by the Toll Free Numbering Administrator. Non-profit health and safety organizations must be 26 U.S.C. §501(c)(3) organizations.

¹⁷⁰ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7897-98, para. 39.

cost,¹⁷¹ as well as for use by non-profit health and safety organizations that meet the standard of our precedent.¹⁷²

75. Government (federal, state, local and Tribal) entities as well non-profit health and safety organizations have a unique relationship with toll free numbers. Not only do they use numbers to provide service to the public,¹⁷³ but they also face unique budgeting challenges that may place toll free numbers assigned at auction out of reach. We disagree with commenters who argue that the public interest nature of non-profit organizations can be practically difficult to identify,¹⁷⁴ and that setting aside numbers for non-profits presents a greater possibility of fraud and abuse.¹⁷⁵ The Commission will use the 501(c)(3) designation as well our existing standard for public health and safety use to limit set-asides to those legitimate public interest organizations that truly promote public health and safety. This process is consistent with the way the Commission has considered petitions for reassignment of toll free numbers in the past.¹⁷⁶

76. We disagree with the arguments in the record that offering any public interest-related number set aside for governmental or non-profit entities is inherently not “equitable” under section 251(e)(1) of the Act.¹⁷⁷ To the contrary, this set aside works to assuage concerns that some bidders—government and non-profit entities—may be precluded from obtaining desired numbers by our auction experiment.¹⁷⁸ However, we are sympathetic to the argument that the public should have an opportunity to object to requests that numbers be set aside.¹⁷⁹ For this reason, while we will consider requests from government and non-profit entities to set aside numbers in the 833 code that are already considered mutually exclusive, in order for a request to be considered, the government or non-profit entity must file a “Petition for an 833 Toll Free Number” with the Bureau in accordance with the Auction Procedures Public Notice. The Bureau will then solicit public comment prior to making its decision on the number request based on the public interest.¹⁸⁰ We intend to maintain our standard for review consistent with the

¹⁷¹ ACTIS Comments at 5; *see also* ATFP Comments at 9-10 (stating that government agencies should have the privilege of bypassing normal assignment, and only once the public has had an opportunity to object); *cf.* Network Telephone Services Comments at 1-2 (arguing that the Commission should protect numbers that have established public benefit resources in other codes, such as 833 equivalent of 1-800-Medicare and 1-800-Red-Cross).

¹⁷² *Cf.* Network Telephone Services Comments at 1-2 (describing the “ugly problems [that] could result” if numbers used by the Red Cross in the 800 code are “hi-jack[ed]” by an “unsavory fundraiser”); *see also supra* note 45 (explaining the Commission’s few actions to reassign numbers upon request for reasons of public health and safety).

¹⁷³ *See* Network Telephone Services Comments at 1-2 (discussing 1-800-Medicare and the IRS’s toll free number).

¹⁷⁴ *See* 800 Response Comments at 12 (arguing that there are substantial practical difficulties to offering preference to non-profit entities); NANC Report Appx. C at 5. *But see* Network Telephone Services Comments at 1.

¹⁷⁵ *See* ATFP Comments at 10 (suggesting that setting aside numbers for non-profits would cause “all kinds o[f] non-profits [to] suddenly spring up solely to secure numbers”). We further disagree with the suggestion that allowing private non-profit organizations to petition for numbers to be set aside is an act of “*eminent domain*.” *See* ATFP Comments at 11-12. This claim is fundamentally at odds with the toll free numbering scheme, which vests the Commission with authority to assign numbers “*equitabl[y]*.” 47 U.S.C. § 251(e)(1). Further, subscribers have no property interest in toll free numbers.

¹⁷⁶ *See 800-RED-CROSS Permanent Reassignment Order* at 9925, para. 1.

¹⁷⁷ Elizabeth White Comment at 3.

¹⁷⁸ *Cf.* Network Telephone Services Comments at 1-2; ACTIS Comments at 5.

¹⁷⁹ ATFP Comments at 9.

unusual and compelling public health and safety standards in Commission precedent¹⁸¹ and direct the Bureau to consider each application individually, on a case-by-case basis, as it is filed with the Commission. We note that while being a government entity or a 501(c)(3) organization is a necessary condition for a set aside, it is not in and of itself a sufficient condition and the Bureau must apply the unusual and compelling public health and safety standards discussed above. If, however, multiple government or non-profit entities file petitions requesting the same number for public health and safety purposes which meet the standard of our precedent, we direct Somos to conduct a lottery for the number among the requesting applicants. We believe a lottery is both an equitable and expedient way to resolve competing requests for the same number. The Commission will use the information obtained from this number set aside process to determine whether we should continue to use it in future code openings.

6. Treatment of Trademark Holders

77. We decline to adopt proposals in the record to provide special treatment for trademark-holders. Specifically, commenters have suggested that we provide trademark-holders a right of first refusal¹⁸² or adopt new “procedures” to address instances of abuse of a number desired by a trademark-holder.¹⁸³ We find that, as under the first-come, first-served methodology, “concerns regarding trademark infringement and unfair competition . . . should be addressed by the courts under the trademark protection and unfair competition laws, rather than by the Commission.”¹⁸⁴

78. We disagree with commenters who argue that failing to provide special treatment for trademark-holders is contrary to the public interest.¹⁸⁵ As 1-800-CONTACTS admits, the Lanham Act already serves to “protect consumers by preventing confusion and unfair competition,”¹⁸⁶ and 1-800-FLOWERS has acknowledged its success policing use that infringes on its trademarks under the first-come, first-served methodology.¹⁸⁷ Some commenters argue that a market-based approach to number assignment will encourage “extortion” of trademark-holders by bad actors,¹⁸⁸ but we see no reason to diverge from our position that number assignment should be trademark-agnostic.¹⁸⁹ An auction mechanism assigns numbers to those who value them most highly, and a secondary market—which we

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¹⁸⁰ Petitions must be filed in ECFS in Docket No. WC 17-192 and CC Docket No. 95-155. Filing the petition does not guarantee the request will be granted. See Somos Comments at 7.

¹⁸¹ See *US-Reward Reassignment Order*, 32 FCC Rcd at 7409, paras. 6-7; see also *Toll Free Service Access Codes*, 32 FCC Rcd at 7408-09, paras. 6-8; *Toll Free Service Access Codes*, Order, 27 FCC Rcd 2965, 2965, 2968, paras. 1, 6 (WCB 2012); *800-RED-CROSS Permanent Reassignment Order*, 21 FCC Rcd at, 9925, 9927, paras. 1, 5; *Toll Free Service Access Codes*, Order, 20 FCC Rcd 15089, 15090, para. 3 (2005); ACTIS Comments at 5.

¹⁸² 1-800-CONTACTS Comments at 10-12; December 12, 2017 Letter of 1-800-Flowers to Marlene H. Dortch at 2 (1-800-FLOWERS Dec. 12, 2017 *Ex Parte*); M&S Telecom Services Comments at 1 (recommending a right of first refusal if trademark-holders meet certain qualifications); cf. Conduit Consulting Comments at 1-4 (offering alternative process for assignment with priority given to trademark-holders).

¹⁸³ ACTIS Comments at 6.

¹⁸⁴ *1998 Toll Free Order* at 9068, para. 22; see also Network Telephone Services Comments at 2 (“The FCC should consider in their analysis that there are courts to resolve conflicts involving an established number assigned to a party in the private sector . . . Under current FCC rules, a company may reserve the equivalent to its assigned vanity number by being the first in line to acquire the similar telephone number when a new toll-free code is introduced. However, if they are not the first to reserve the telephone number, they may still have legal recourse if a competitor starts using a confusingly similar mark or telephone number.”).

¹⁸⁵ See 1-800-CONTACTS Comments at 6 (“Where a particular number is protected by trademark law . . . there is only one possible auction result that would favor the public interest: acquisition by the trademark holder.”); 1-800-FLOWERS Dec. 12, 2017 *Ex Parte* at 2 (arguing that special protection for trademark-holders is necessary in order “to protect the public at large from unnecessary confusion and deception”).

¹⁸⁶ 1-800-CONTACTS Comments at 4.

adopt on a limited basis below—only facilitates this assignment.¹⁹⁰ Subscribers remain bound by trademark law once a number has been assigned.¹⁹¹ We also disagree with the argument of 1-800-CONTACTS that auctioning numbers without special protection for trademark holders “would conflict with the statutory requirements of the Lanham Act.”¹⁹² 1-800-CONTACTS does not identify with specificity which requirements the Commission would violate, or provide support for its argument.¹⁹³

C. Secondary Markets for Toll Free Numbers

79. To fully realize the effectiveness of assigning numbers via competitive bidding, we allow for a secondary market of toll free numbers won at auction. In the *Toll Free Assignment NPRM*, the Commission sought comment on revising our rules to promote development of a secondary market for toll free numbers.¹⁹⁴ We have reviewed the record, and agree with commenters who argue that our current rules may have a “chilling impact . . . on private enterprise.”¹⁹⁵ Consistent with our goal of making the rights to use numbers available on an equitable basis by assigning them to those who can put the numbers to their best use, and with the record,¹⁹⁶ we now allow for the development of a secondary market for numbers assigned via competitive bidding.

80. The Commission’s current rules prevent three types of conduct that limit or preclude the development of a secondary market. First, the rules prevent brokering—“the selling of a toll free number by a private entity for a fee.”¹⁹⁷ Second, the rules prevent hoarding, which is the “acquisition by a toll free subscriber . . . of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service.”¹⁹⁸ Third, the rules prevent warehousing, a practice in which a RespOrg reserves toll free numbers “without having an actual toll free subscriber for whom the numbers are being reserved.”¹⁹⁹ These rules not only preclude the sale of the rights to use toll free numbers—central to a secondary market—but also frustrate number sales by placing obligations on potential sellers.

81. As the Commission explained in the *Toll Free Assignment NPRM*, a secondary market appears to be “an efficient and productive use of numbers” because it “permit[s] subscribers to legally

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¹⁸⁷ 1-800-FLOWERS Dec. 12, 2017 *Ex Parte* at 1-2 (stating it has “actively policed it [*sic*] trademarks against those seeking to poach on the goodwill that has been built in the 1-800-FLOWERS brand”).

¹⁸⁸ See 1-800-CONTACTS Comments at 8-10 (“bad actors are likely to increase their efforts to extort excessive payments from trademark holders”); 1-800-FLOWERS Dec. 12, 2017 *Ex Parte* at 2 (arguing that bidders “will seize upon the opportunity to acquire a vanity number confusingly similar to a brand and then seek to demand a large ransom from the trademark owners”); ACTIS Comments at 6 (arguing that bidders could “subject[] a brand holder . . . to some form of number ransom”).

¹⁸⁹ 1998 *Toll Free Order*, 13 FCC Rcd at 9070, para. 27 (“We recognize that many commenters may have invested in their numbers by, for example, advertising and developing name recognition, and that a right of first refusal would arguably protect that investment. We disagree, however, that a right of first refusal is the only way subscribers can protect these investments. Some toll free subscribers may have recourse to the trademark protection laws. Public education campaigns, too, can minimize confusion and thus protect subscribers’ investments.”).

¹⁹⁰ See *infra* Section III.C.

¹⁹¹ See Network Telephone Services Comments at 3 (“A successful auction bidder would still not be entitled to infringe on another’s [*sic*] party’s trademark or to unfairly compete with a competitor in the marketplace simply because they were the highest bidder in an FCC auction.”).

¹⁹² 1-800-CONTACTS Reply at 1.

¹⁹³ The United States Court of Appeals for the Sixth Circuit has found, in the context of an Internet domain name registrar, that assigning an item to a third party is not “use” for purposes of a trademark infringement claim. *Bird v. Parsons*, 289 F. 3d 865, 878 (6th Cir. 2002) (“The fact that [a] registrant can then use [a] domain name to infringe on the rights of a registered trademark owner does not subject the registrar to liability for trademark infringement or unfair competition.”).

¹⁹⁴ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7895-96, paras. 30-33.

obtain numbers which they value.”²⁰⁰ It also promotes the efficient operation of an auction: Permitting the free acquisition and transfer of the rights to use numbers allows subscribers to purchase or sell numbers in response to the outcome of the auction, and limits pre-auction costs associated with estimating which—and how many—numbers a bidder may win. It further encourages value-creating entities to promote efficiency by procuring rights to numbers with an intent to sell those rights to other interested subscribers. The secondary market thus ensures that numbers are assigned to those parties who can most efficiently use them.²⁰¹ Under our current system, by contrast, a party that desires a number most cannot ensure that it is assigned that number; and if it fails to be assigned that number, it has no mechanism to procure it after the initial assignment. An auction mechanism with a robust secondary market not only ensures that numbers are assigned to the bidder that values them most at the time of assignment, but also allows the rights to numbers to be reassigned when valuations change.²⁰²

82. We disagree with commenters who claim that permitting a robust secondary market will lead to undesirable conduct²⁰³ and extortion.²⁰⁴ With an auction and secondary market, the rights to numbers will be assigned to those entities who value them most; differences in valuation do not reflect undesirable conduct or extortion. To the extent there is genuine misconduct, trademark and competition law serves to protect parties from bad actors.²⁰⁵ Further, the argument that allowing a secondary market will “lead to premature exhaust”²⁰⁶ is minimized by our decision to allow a secondary market only for those numbers assigned by auction. In the present experiment, the 833 Auction includes approximately 17,000 numbers—under one percent of all 833 numbers.²⁰⁷ To the extent our rules preventing a secondary market were adopted to limit exhaust,²⁰⁸ we do not believe this limited exception will significantly affect the exhaust of the entire pool of 833 numbers. Because creating this limited secondary market will not lead to premature exhaust, we see no need to adopt the proposal in the record that we “assess[] a fixed monthly direct contribution from all toll-free number holders [to] discourage hoarding and warehousing” in order to combat exhaust.²⁰⁹ Further, we disagree with CenturyLink’s argument that we should not combine a secondary market with the 833 Auction experiment so that an

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¹⁹⁵ ATFP Reply at 12; *see also* Gary Smith Comments at 1-3 (arguing “in support of the proposed FCC rule of eliminating all warehousing/brokering/hoarding rules” and describing chilling effect on small businesses who have sought to procure desirable toll free numbers).

¹⁹⁶ ATFP Comments at 4 (“The commission must remove any suggestion that Direct Transfers are prohibited, as outlined in the ATIS petition.”); CSF Corp Comments at 4 (stating that “generally we would be in favor of a secondary market”); Power Auctions Comments at 8-9 (expressing support for proposal “to allow a secondary market for toll free numbers to develop”); RingBoost.com Comments at 2 (“The prohibition on selling numbers . . . is outdated and should be revoked in favor of a free market approach.”); *cf.* ATIS SNAC Comments at 5-6 (“[T]here are specific situations (such as the sale of a business, correction of errors, etc.) in which transfers between Subscribers should be allowed[.]”); Verizon Comments at 2 (“Brokering restrictions are not required where the toll free number is incidental to other legitimate transactions, or to remedy administrative errors that sometimes arise.”).

¹⁹⁷ 47 CFR § 52.107(a).

¹⁹⁸ *Id.*

¹⁹⁹ 47 CFR § 52.105(a).

²⁰⁰ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7895, para. 31.

²⁰¹ Daniel A. Lyons, The Free State Foundation, *Toll-Free Assignment Modernization and the Triumph of Coase* at 6 (2017), http://www.freestatefoundation.org/images/Toll-Free_Assignment_Modernization_and_the_Triumph_of_Coase_091817.pdf (“[A]llowing resale provides incentives for existing toll-free number holders to transfer the asset to someone who values it more.”).

²⁰² Power Auctions Comments at 8 (“A subscriber’s needs for a toll free number may change over time because of various reasons. A secondary market would allow a subscriber who has been assigned a toll free number that it no longer values to reassign that number to another subscriber who now values that number more.”).

auction “may be adequately evaluated without the influence of other variables.”²¹⁰ As we have explained, a secondary market is an important component to a successful auction, because it allows auction participants to later transfer numbers in response to information learned at the auction. And exploring these two changes simultaneously will allow us to see how they work in conjunction with one another.

83. We also disagree with the argument that “abandoning the brokering rule . . . violates the statutory mandate of equitable distribution of numbers.”²¹¹ The secondary market is both “orderly and efficient” and “fair.”²¹² The secondary market is “orderly”²¹³ because it is simple: Competing claims are resolved by assigning rights to a number to the party who values it most. The secondary market is “efficient,” as that term is interpreted under our precedent in this context, in that it will minimize number exhaust by allowing rights to numbers to be obtained without requiring the opening of a new code.²¹⁴ Finally, the secondary market is “fair” because no potential subscribers are discriminated against; there is equal opportunity to participate in the secondary market.²¹⁵

84. To allow for a secondary market to develop, we adopt exceptions to the Commission’s rules prohibiting the brokering, hoarding, and warehousing of toll free numbers for numbers acquired in an auction.²¹⁶ Because, as explained, a secondary market can promote the efficiency of an auction, we find that it is appropriate that we apply our exceptions to numbers assigned via competitive bidding. Numbers which are eligible for this exception by virtue of having been assigned via competitive bidding do not lose their eligibility if they are sold or otherwise transferred to another subscriber. Numbers which are returned to the spare pool, however, do not retain eligibility for the exception simply because they were once assigned in an auction.

85. We decline, at this time, to mandate that fees associated with the sale of numbers on the secondary market go to the cost of toll free numbering administration borne by Somos.²¹⁷ We are convinced by the record that our rules should not “increase the costs to subscribers.”²¹⁸ However, as we have explained previously,²¹⁹ in order to evaluate the operation of the secondary market, we direct Somos

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²⁰³ See CenturyLink Comments at 4 (“A secondary numbering market stands to incite number hoarding and trafficking and encourage speculation[.]”); cf. 800 Response Comments at 11 (“[W]arehousing and hoarding . . . [allow parties] to usurp for themselves the value inherent in highly desirable toll free numbers.”).

²⁰⁴ 1-800-CONTACTS Comments at 8-9 (“In the environment of an FCC-approved secondary market, bad actors are likely to increase their efforts to extort excessive payments from trademark-holders”); cf. Verizon Comments at 3 (“Allowing speculative brokering transactions, and marketplace behavior that risks severing the connection between toll free numbers and bona fide customers, risks increasing the frequency of—and costs of resolving—such disputes to legitimate brand and trademark holders[.]”).

²⁰⁵ See also *supra* Section III.B.6.

²⁰⁶ 800 Response Comments at 11; see also 1-800-CONTACTS Reply at 5 (“[L]ifting the restrictions on brokering, warehousing, and hoarding “will strain the available numbers in the spare pool – which, in turn, would expedite the exhaust of available numbers[.]”); Verizon Comments at 7 (arguing that brokering, warehousing, and hoarding rules “ensur[e] that toll free numbers are efficiently and actually utilized by and tied to individual customers”); NANC Report Appx. B at 2-3.

²⁰⁷ See CSF Corp. Comments at 2 (“There are 8M numbers available when a code opening occurs, so having 17,000 that are mutually exclusive represents .2% of those available numbers.”)

²⁰⁸ See *Toll Free Service Access Codes*, CC Docket 95-155, Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11189, para. 38 (1997); see also NANC Report Appx. B at 2.

²⁰⁹ Interisle Consulting Comments at 2; see also NANC Report Appx. B at 8-9 (suggesting that “administrative fees . . . be increased on RespOrgs to decrease the amount of time a number is held” and limit hoarding and warehousing).

to maintain data on secondary market transactions and make that data available to the Commission. To facilitate the collection of data, RespOrgs will be required to provide subscriber information to Somos, including the new subscriber's name and contact information, and other limited information Somos deems necessary.

D. Other Toll Free Rule Revisions

86. To further modernize our decades-old toll free numbering rules, we adopt several definitional and technical updates to improve clarity and flexibility in toll free number assignment. We also incorporate recommendations of the North American Numbering Council (NANC)²²⁰ to revise our definitions and lag time rules to be consistent with our new market-based toll free assignment rule.

87. *NANC Report.* In the *Toll Free Assignment NPRM*, the Commission sought comment on whether to “eliminate or revise any other toll free rules” and specifically suggested sections 52.101(d) and 52.103 as potential targets for revision.²²¹ After the release of the *NPRM*, the Bureau directed the NANC to recommend possible rule changes to promote a market-based approach to the assignment of toll free numbers.²²² In response to this direction, the NANC Toll Free Number Assignment Modernization Working Group recommended revisions to sections 52.101 and 52.103 of our rules regarding general definitions and lag times.²²³

88. *General Definitions.* We revise section 52.101(a) to replace the term “Number Administration and Service Center” (NASC) with the term “Toll Free Numbering Administrator.”²²⁴ Despite the fact that the Commission has used the term Toll Free Numbering Administrator for several years, our rules have not reflected that terminology. Our rules’ reference to the NASC is now outdated, and this revision will update the Commission’s rules to reflect current industry terminology. We further

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²¹⁰ CenturyLink Comments at 6.

²¹¹ Elizabeth White Comments at 3.

²¹² See *1998 Toll Free Order*, 13 FCC Rcd at 9065, para. 12.

²¹³ *Id.* (an orderly toll free number allocation “will simplify the administrative requirements necessary to assign toll free numbers and avoid the need to resolve competing claims among subscribers to particular numbers”).

²¹⁴ *Id.* (an efficient toll free number allocation “will minimize exhaustion of the toll free numbering resource”).

²¹⁵ *Id.* at 9069, para. 25 (stating that first-come, first-served assignment “best serves” the fairness standard, as it “does not discriminate against new subscribers,” because that assignment method provides “[a]ll subscribers . . . equal opportunity to reserve desirable toll free numbers as new codes are opened”).

²¹⁶ 47 CFR §§ 52.105, 52.107. We also modify our rule limiting how long a number may remain in “reserved” status in order to harmonize that rule with the exceptions we adopt today. 47 CFR § 52.103(b).

²¹⁷ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7896, para. 32.

²¹⁸ ATIS SNAC Comments at 6; see also 800 Response Information Services at 9; NANC Report Appx. B at 3-4.

²¹⁹ See *supra* para. 65.

²²⁰ The NANC is the Commission’s Federal Advisory Committee on numbering matters.

²²¹ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7897, para. 38.

modify our definition, consistent with the NANC's recommendation,²²⁵ to reflect that the Toll Free Numbering Administrator role is filled by an entity appointed under our authority pursuant to section 251(e)(1) of the Act. Because the Toll Free Numbering Administrator serves the same purpose as the former NASC, however, we otherwise retain the same definition as to the role of the toll free administrator.

89. We further revise section 52.101(e) to expand the definition of "Toll Free Subscriber." The Commission's rules currently define a Toll Free Subscriber as "[T]he entity that requests a Responsible Organization to reserve a toll free number from the SMS database."²²⁶ Our revised rule establishes that a Toll Free Subscriber is "The entity that has been assigned a toll free number."²²⁷ This change will make our definition consistent with our revised rule section 52.111, which allows for assignment via a market-based methodology, by making clear that a subscriber is not limited to requesting a toll free number be reserved in the toll free database.²²⁸

90. *Lag Times.* We make multiple revisions to section 52.103, which sets forth the various statuses of toll free numbers in the Toll Free Database.²²⁹ First, we adopt a new section 52.103(a)(10) to create a "Transitional Status" category for numbers that have been disconnected for less than four months, but for which no service provider intercept recording (also known as Exchange Carrier Intercept Recording) is being provided.²³⁰ The NANC comments, and we agree, that adding this Transitional Status will better align the Commission's rules with current industry practice.²³¹

91. Second, we modify section 52.103(d) to make the existing Disconnect Status rule compatible with a market-based number assignment approach. Section 52.103(d) requires disconnected numbers to stay in Disconnect Status for a period of up to four months, and then go to Spare Status at the end of that period.²³² The NANC Report recommends amending the rule to allow numbers that have been in Disconnect Status for up to four months to go directly to Unavailable *or* Spare Status.²³³ We conclude, and the NANC agrees, that allowing numbers to go from Disconnect Status to Unavailable—rather than directly to Spare Status—will ensure that any number can be assigned by a market-based mechanism.²³⁴

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²²² Letter from Kris Anne Monteith, Chief, WCB, FCC, to Travis Kavulla, Chair, NANC at 1 (Dec. 7, 2017) http://www.nanc-chair.org/docs/mtg_docs/Dec17_NANC_Referral_TFAM.pdf (Monteith Letter).

²²³ See NANC Report Appx. A at 4-12.

²²⁴ NANC Report Appx. A at 4. Section 52.101(a) currently defines "Number Administration and Service Center" as "The entity that provides user support for the Service Management System and administers the Service Management System database on a day-to-day basis." 47 C.F.R. § 52.101(a).

²²⁵ NANC Report Appx. A at 4.

²²⁶ 47 C.F.R. § 52.101(e).

²²⁷ See, e.g., NANC Report Appx. A at 6.

²²⁸ For example, a subscriber can be assigned a number through the competitive bidding process.

²²⁹ 47 C.F.R. § 52.103(a)(3) (definition of lag times).

²³⁰ NANC Report Appx. A at 8. Transitional Status is thus distinct from Disconnect Status, where a service provider intercept recording (i.e., a recording explaining that a number has been disconnected) is being provided.

²³¹ *Id.*

²³² 47 C.F.R. § 52.103(d) (definition of Disconnect Status).

²³³ NANC Report Appx. A at 9. We note that numbers set-aside for a market-based assignment are placed in unavailable status. See *833 Code Opening Order*, 32 FCC Rcd at 3154-55, para. 6 (directing Somos to place the mutually exclusive toll free numbers in unavailable status); 47 C.F.R. § 52.103(a)(6) (definition of Spare Status) and 47 C.F.R. § 52.103(f) (definition of Unavailable Status).

²³⁴ *Id.*

This change will allow the Toll Free Numbering Administrator to send numbers that have been selected for market-based assignment directly into Unavailable rather than into Spare Status. We thus adopt this change, which will allow greater flexibility and further modernize the toll free assignment process.

92. Finally, we also adopt a change to section 52.103(f), “Unavailable Status.” The description of “Unavailable Status” in that section references DSMT, which has since been replaced by Somos as the Toll Free Numbering Administrator. The definition should be updated to refer to the Toll Free Numbering Administrator.²³⁵ This revision will ensure that the Commission’s rules reflect current industry terminology. We also revise rule section 52.109(c) to change spare “poll” to spare “pool,” thus correcting a typographical error in this rule.

93. The ministerial revisions we adopt today are a logical outgrowth of the proposals in the *Toll Free Assignment NPRM*. As the Commission has previously explained, “[a]n NPRM satisfies the logical outgrowth test if it ‘expressly ask[s] for comment on a particular issue or otherwise ma[kes] clear that the agency [is] contemplating a particular change.’”²³⁶ That test is satisfied here. The *Toll Free Assignment NPRM* expressly proposed a revision to the rules governing toll free number assignment to allow for assignment via competitive bidding.²³⁷ It further sought comment on whether to “eliminate or revise any other toll free rules,” with specific reference to sections 52.101(d) and 52.103 of the rules.²³⁸ Our ministerial revisions, with one minor exception, apply to sections 52.101 and 52.103.²³⁹ Further, the revisions operate to harmonize those rules with the competitive bidding assignment methodology expressly noticed in the *Toll Free Assignment NPRM*. We find that “parties should have anticipated that the rule [revisions] ultimately adopted [were] possible.”²⁴⁰

E. Legal Authority

94. The Commission has found section 251(e)(1)²⁴¹ of the Act “to empower the Commission to ensure that toll free numbers, which are a scarce and valuable national public resource, are allocated in an equitable and orderly manner that serves the public interest.”²⁴² Pursuant to these statutory mandates, the Commission has the “authority to set policy with respect to all facets of numbering administration in

²³⁵ *Id.* at 11; *see also Toll Free Governance Order*, 28 FCC Rcd 15328.

²³⁶ *Revitalization of the AM Radio Service*, 2018 WL 2387497 at *2, para. 7 (May 22, 2018) (quoting *CSX Transportation, Inc. v. Surface Transportation Board*, 584 F.3d 1076, 1081 (D.C. Cir. 2009)).

²³⁷ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7888-89, paras. 5-9.

²³⁸ *Id.* at 7897, para. 38.

²³⁹ The exception is our revision to section 52.109(c), correcting a typographical error in that rule. *See infra* Appx. A.

²⁴⁰ *Revitalization of the AM Radio Service*, 2018 WL 2387497 at *2, para. 7 (May 22, 2018). We also find good cause, to the extent necessary, to adopt these ministerial changes. 5 U.S.C. § 553(d)(3). These revisions are insignificant and inconsequential to the industry and the public. *See Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001); *see also Texaco, Inc. v. FPC*, 412 F.2d 740, 743 (3d Cir. 1969); *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D. S.C. 1983). Our revisions to sections 52.101(a), 52.103(a)(10), 52.103(f), and 52.109(c) either correct typographical errors or bring our rules into line with contemporary practice and do not increase or otherwise modify any entities’ regulatory burden. *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001). Our revisions to sections 52.101(e) and 52.103(d) similarly do not impact any entities’ regulatory burden, and only harmonize our rules to allow for the successful operation of the competitive bidding assignment methodology we adopt today.

²⁴¹ 47 U.S.C. § 251(e)(1) (ordering the Commission to make “numbers available on an equitable basis,” and providing the Commission with “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States”).

²⁴² *Toll Free Service Access Codes*, 12 FCC Rcd at 11179, para. 22.

the United States,”²⁴³ and a “require[ment] . . . to ensure the efficient, fair, and orderly allocation of toll free numbers.”²⁴⁴ The actions we take today meet the statutory requirement that numbers be made “available on an equitable basis”²⁴⁵—an auction and secondary market are both efficient and orderly, and fair.²⁴⁶ We also have clear authority to require Somos to serve as the auctioneer for 833 numbers and to comply with requirements adopted in this order. Section 251(e)(1) obligates the Commission to ensure its Toll Free Numbering Administrator administers “telecommunications numbering and to make such numbers available on an equitable basis.”²⁴⁷ And section 201(b) authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act].”²⁴⁸

95. CenturyLink argues that we do not have authority to assign toll free numbers through competitive bidding because, unlike in the context of spectrum auctions, Congress did not specifically task the Commission with using competitive bidding for toll free numbers.²⁴⁹ Since the Act was adopted in 1934, however, Congress has stated with particularity the various means for assignment of spectrum licenses; the specific addition of an assignment via competitive bidding supplemented the previous Congressional direction to make licenses available via an application process or random assignment.²⁵⁰ By contrast, Congress has used much more general language in section 251 and thus given us broad discretion to administer numbering. In Congress’s grant of “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” in section 251(e)(1),²⁵¹ we find authority to employ any number assignment mechanisms which meet the statute’s “equitable basis” requirement, including competitive bidding.

IV. PROCEDURAL MATTERS

96. *Congressional Review Act.* The Commission will send a copy of this Report and Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁵² In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small

²⁴³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996); *see also* 47 U.S.C. § 251(e)(1) (“The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”).

²⁴⁴ *Toll Free Service Access Codes*, 12 FCC Rcd at 11176, para. 18 (citing “§ 1 and Title II of the . . . Act” and section 251(e)(1)).

²⁴⁵ 47 U.S.C. § 251(e)(1).

²⁴⁶ *See supra* Sections III.A.2, III.C.

²⁴⁷ 47 U.S.C. § 251(e)(1). *See also Toll Free Governance Order*, 28 FCC Rcd at 15330-31, para. 10; *Toll Free Service Access, et. al*, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162 (1997) (seeking comment on who should administer the SMS in light of the requirement of section 251(e) that the Commission create or designate one or more “impartial” entities to administer telecommunications numbering).

²⁴⁸ 47 U.S.C. § 201(b).

²⁴⁹ Century Link Comments at 3-4 n.8.

²⁵⁰ *See* Nicholas W. Allard, *The New Spectrum Auction Law*, 18 Seton Hall Legis. J. 13, 23-30 (1993) (describing history of authority to assign spectrum licenses via specific mechanisms).

²⁵¹ 47 U.S.C. § 251(e)(1).

²⁵² *See* 5 U.S.C. § 801(a)(1)(A).

Business Administration (SBA) and will be published in the Federal Register.²⁵³

97. *Paperwork Reduction Act of 1995 Analysis.* This Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA, 44 U.S.C. § 3507. OMB, the general public, and other Federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

98. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this Order. The FRFA is set forth in Appendix B. The Commission will send a copy of this Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

V. ORDERING CLAUSES

99. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 201(b), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), and 251(e)(1), this Order IS ADOPTED.

100. IT IS FURTHER ORDERED that Part 52 of the Commission's rules ARE AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication of the rule amendments in the Federal Register.

101. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 251(e)(1), Somos, Inc., the Toll Free Numbering Administrator, IS DIRECTED to retain and make available to the Commission all data and information about the auction and its administration gathered before, during, and after the auction.

102. IT IS FURTHER ORDERED that, pursuant to section 251(e)(1) of the Communications Act of 1934, as amended, the Wireline Competition Bureau IS DIRECTED to review specific petitions and, as necessary and after a notice and comment period, grant toll free numbers to governmental and non-profit entities where such grant is consistent with the public health and safety standards in Commission precedent.

103. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

104. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

FEDERAL COMMUNICATIONS COMMISSION

²⁵³ *See* 5 U.S.C. § 605(b).

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, Part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 52 – NUMBERING

* * * * *

Subpart D—Toll Free Numbers

1. Amend sections 52.101(a) and (e) by revising to read as follows:

§ 52.101 General definitions.

(a) *Toll Free Numbering Administrator (TFNA)*. The entity appointed by the Commission under its authority pursuant to 47 C.F.R. § 251(e)(1) that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.

* * * * *

(e) *Toll Free Subscriber*. The entity that has been assigned a toll free number.

* * * * *

2. Add new sections 52.103(a)(10) and (b)(1), and; amend sections 52.103(d) and (f) by revising to read as follows:

§ 52.103 Lag Times.

* * * * *

(a) * * *

(10) *Transitional Status*. Toll free numbers that have been disconnected for less than four months, but for which no Exchange Carrier Intercept Recording is being provided.

* * * * *

(b) * * *

(1) Toll free numbers assigned via competitive bidding may remain in reserved status for a period of unlimited duration.

(d) *Disconnect Status*. Toll free numbers must remain in disconnect or a combination of disconnect and transitional status for up to 4 months. No requests for extension of the 4-month disconnect or transitional interval will be granted. All toll free numbers in disconnect status must go directly into the spare or unavailable category upon expiration of the 4-month disconnect interval. A Responsible Organization may not retrieve a toll free number from disconnect or transitional status and return that number directly to working status at the expiration of the 4-month disconnect interval.

(f) *Unavailable Status*.

(1) Written requests to make a specific toll free number unavailable must be submitted to the *Toll Free Numbering Administrator (TFNA)* by the Responsible Organization managing the records of the toll free number. The request shall include the appropriate documentation of the reason for the request. The *Toll Free Numbering Administrator (TFNA)* is the only entity that can assign this status to or remove this status from a number. Responsible Organizations that have a *Toll Free Subscriber* with special circumstances requiring that a toll free number be designated for that particular subscriber far in advance of its actual usage may request that the *Toll Free Numbering Administrator (TFNA)* place such a number in unavailable status.

(2) Seasonal numbers shall be placed in unavailable status. The Responsible Organization for a *Toll Free Subscriber* who does not have a year round need for a toll free number shall follow the procedures outlined in § 52.103(f)(1) of these rules if it wants the *Toll Free Numbering Administrator (TFNA)* to place a particular toll free number in unavailable status.

3. Add new section 52.105(f) to read as follows:

§ 52.105 Warehousing.

* * * * *

(f) *Toll Free Numbers Assigned via Competitive Bidding.* The provisions of this section shall not apply to toll free numbers assigned via competitive bidding or to numbers transferred under this exception.

4. Add new section 52.107(c) to read as follows:

§ 52.107 Hoarding.

* * * * *

(c) *Toll Free Numbers Assigned via Competitive Bidding.* The provisions of this section shall not apply to toll free numbers assigned via competitive bidding or to numbers transferred under the exception to § 52.105 contained in subpart (f) of that section.

5. Amend section 52.109(c) by revising to read as follows:

§ 52.109 Permanent cap on number reservations.

* * * * *

(c) The Wireline Competition Bureau shall modify the quantity of numbers a Responsible Organization may have in reserve status or the percentage of numbers in the spare pool that a Responsible Organization may reserve when exigent circumstances make such action necessary. The Wireline Competition Bureau shall establish, modify, and monitor toll free number conservation plans when exigent circumstances necessitate such action.

6. Amend section 52.111 by revising to read as follows:

§ 52.111 Toll free number assignment.

Toll free telephone numbers must be made available to Responsible Organizations and subscribers on an equitable basis. The Commission will assign toll free numbers by competitive bidding, on a first-come, first-served basis, by an alternative assignment methodology, or by a combination of the foregoing options.

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking (Toll Free Assignment NPRM)* for the Toll Free Assignment Modernization proceeding.² The Commission sought written public comment on the proposals in the *Toll Free Assignment NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.³

A. Need for, and Objectives of, the Rules

2. In the *Toll Free Assignment NPRM*, the Commission reconsidered how to best meet the statutory mandate that it make toll free numbers “available on an equitable basis.”⁴ To this end, the Commission proposed and sought comment on numerous regulatory reforms to existing rules regarding toll free number assignment.⁵

3. Pursuant to the objectives set forth in the *Toll Free Assignment NPRM*, this *Report and Order (Order)* adopts changes to Commission rules regarding toll free number assignment. Specifically, the *Order* (1) revises the Commission’s toll free assignment rule to allow for the use of competitive bidding for toll free numbers;⁶ (2) establishes the use of competitive bidding to assign the over 17,000 mutually exclusive numbers in the 833 toll free code, identified pursuant to the *833 Code Opening Order*;⁷ (3) exempts numbers assigned via competitive bidding from the rules preventing the development of a secondary market;⁸ and (4) makes ministerial changes to our toll free number assignment rules.⁹ These modifications to our toll free number assignment rules will create a more efficient method of toll free number assignment, consistent with our statutory mandate.¹⁰ Ultimately, these reforms will ensure the equitable and efficient assignment of toll free numbers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. The Commission did not receive comments addressing the rules and policies proposed in the IRFAs in the *Toll Free Assignment NPRM*.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Toll Free Assignment Modernization*, CC Docket No. 95-155, Notice of Proposed Rulemaking, 32 FCC Rcd 7885 (2017) (*Toll Free Assignment NPRM*).

³ See 5 U.S.C. § 604.

⁴ 47 U.S.C. § 251(e)(1).

⁵ *Toll Free Assignment NPRM*, 32 FCC Rcd at 7885.

⁶ See *supra* section III.A.

⁷ *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 32 FCC Rcd 3153 (WCB 2017) (*833 Code Opening Order*); see *supra* section III.B.

⁸ See *supra* section III.C.

⁹ See *supra* section III.D.

¹⁰ See 47 U.S.C. § 251(e)(1).

C. Response to Comments by the Chief Counsel for Advocacy of the SBA

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹¹

6. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Order*.¹² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹⁴ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵

8. The changes to our toll free number assignment rules affect obligations on wired and wireless telecommunications carriers, local exchange and interexchange carriers, local and toll resellers, prepaid calling card providers, and cable operators.

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.¹⁶ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁷ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹⁸ Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁹ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.²⁰ Finally, the small entity described as a “small

¹¹ 5 U.S.C. § 604 (a)(3)

¹² See 5 U.S.C. § 604(a)(4).

¹³ See 5 U.S.C. § 601(6).

¹⁴ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁵ See 15 U.S.C. § 632.

¹⁶ See 5 U.S.C. § 601(3)-(6).

¹⁷ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁸ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁹ 5 U.S.C. § 601(4).

²⁰ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²¹ U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.²² We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”²³ Thus, we estimate that most governmental jurisdictions are small.

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁴ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁵ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁶ According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁷ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

12. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data, 3,117 firms

²¹ 5 U.S.C. § 601(5).

²² U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

²³ The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

²⁴ U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017).

²⁵ 13 CFR § 121.201 (NAICS Code 517110).

²⁶ 13 CFR § 121.201 (NAICS Code 517110).

²⁷ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTtype=table.

²⁸ 13 CFR § 121.201 (NAICS Code 517110).

operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁹ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.³⁰ Of this total, an estimated 1,006 have 1,500 or fewer employees.³¹

13. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³³ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

14. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³⁴ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³⁵ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications

²⁹ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

³⁰ See Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

³¹ Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

³² 13 CFR § 121.201 (NAICS Code 517110).

³³ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

³⁴ 5 U.S.C. § 601(3).

³⁵ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.³⁶ U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³⁷ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.³⁸ Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXC's are small entities that may be affected by our proposed rules.

16. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.³⁹ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁰ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

17. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁴¹ The SBA has developed a small business size standard for the category of Telecommunications Resellers.⁴² Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴³ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

³⁶ 13 CFR § 121.201 (NAICS Code 517110).

³⁷ See U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

³⁸ See *Trends in Telephone Service*, at tbl. 5.3.

³⁹ U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017).

⁴⁰ 13 CFR § 121.201 (NAICS code 517911).

⁴¹ U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (NAICS 517911 Telecommunications Resellers).

⁴² 13 CFR § 121.201 (NAICS code 517911).

⁴³ See U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁴⁴ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴⁵ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁴⁶ Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *Report and Order*.

19. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.⁴⁷ According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.⁴⁸ The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

20. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁴⁹ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵⁰ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁵¹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁵² Thus under this category and the

⁴⁴ 13 CFR § 121.201 (NAICS code 517110).

⁴⁵ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁴⁶ *Trends in Telephone Service*, at tbl. 5.3.

⁴⁷ 13 CFR § 121.201 (NAICS code 517110).

⁴⁸ See Fed. Commc'ns Comm'n, *FCC Form 499 Filer Database*, <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited June 20, 2017).

⁴⁹ NAICS Code 517210. See U.S. Census Bureau, *American Fact Finder—About the Data*, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

⁵⁰ 13 CFR § 121.201 (NAICS code 517210).

⁵¹ U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS 51720, “Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012”).

⁵² Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

21. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.⁵³ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.⁵⁴ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

22. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁵⁵ The SBA has approved these definitions.⁵⁶

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁵⁷ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵⁸ According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁵⁹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

24. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.⁶⁰ The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.⁶¹ The 2012 Economic Census indicates that 367 firms were operational

⁵³ See Fed. Comm'n Comm'n, *Universal Licensing System*, <http://wireless.fcc.gov/uls> (last visited June 20, 2017). For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁵⁴ *Trends in Telephone Service*, at tbl. 5.3

⁵⁵ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

⁵⁶ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

⁵⁷ 13 CFR § 121.201 (NAICS code 517210).

⁵⁸ *Id.*

⁵⁹ *Trends in Telephone Service*, at tbl. 5.3.

⁶⁰ See U.S. Census Bureau, 2012 NAIC Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515210&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (2012 NAICS code, “515210 Cable and Other Subscription Programming”).

⁶¹ 13 CFR § 121.201 (NAICSs Code 515210).

for that entire year. Of this total, 357 operated with less than 1,000 employees.⁶² Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

25. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁶³ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁶⁴ Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.⁶⁵ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁶⁶ Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁶⁷ Thus, under this standard as well, we estimate that most cable systems are small entities.

26. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶⁸ There are approximately 52,403,705 cable video subscribers in the United States today.⁶⁹ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁷⁰ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁷¹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁷² Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

⁶² See U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS code 51510, "Estab & Firm Size: Employment Size of Establishments for the U.S.").

⁶³ 47 CFR § 76.901(e).

⁶⁴ This figure was derived from a August 15, 2015 report from the FCC Media Bureau, based on data contained in the Commission's Cable Operations and Licensing System (COALS). See <http://www.fcc.gov/coals>.

⁶⁵ Data obtained from SNL Kagan database on April 19, 2017.

⁶⁶ 47 CFR § 76.901(c).

⁶⁷ August 5, 2015 report from the FCC Media Bureau based on its research in COALS. See <http://www.fcc.gov/coals>.

⁶⁸ See 47 CFR § 76.901(f) & nn.1-3.

⁶⁹ See SNL Kagan at <http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (subscription required).

⁷⁰ 47 CFR § 76.901(f) & nn.1-3.

⁷¹ See SNL Kagan at <http://www.snl.com/interactivex/TopCableMSOs.aspx> (subscription required).

⁷² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR § 76.901(f).

27. *All Other Telecommunications.* The “All Other Telecommunications” industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁷³ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁷⁴ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁷⁵ Thus a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

28. *Auction Applications and Certifications.* The *Order* establishes the use competitive bidding to assign the over 17,000 mutually exclusive numbers in the 833 toll free code, identified pursuant to the *833 Code Opening Order*.⁷⁶ In order to participate in the competitive bidding process, a potential participant will be obligated to submit an application including information regarding, but not limited to, ownership information.⁷⁷ Potential participants will also be required to submit certifications stating that they will follow certain auction rules and requirements, including the limitation that each auction participant bid on behalf of only one interested party (including itself) for the same toll free numbers.⁷⁸

29. *Secondary Market Transfers.* The *Order* exempts numbers assigned via competitive bidding from the rules preventing the development of a secondary market.⁷⁹ We require Somos, Inc., the Toll Free Numbering Administrator, to maintain information regarding post-auction secondary market transfers.⁸⁰ Entities will be required to provide transaction information to Somos, including the new subscriber’s name and contact information and other limited information as necessary.⁸¹

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. In this *Order*, the Commission modifies its toll free number assignment rules to promote the efficient and equitable assignment of toll free numbers. Overall, we believe the actions in this

⁷³ U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017) (enter 2012 NAICS code 517919).

⁷⁴ 13 CFR § 121.201 (NAICS Code 517919).

⁷⁵ U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodTtype=table (2012 NAICS Code 517919, “Estab & Firm Size: Receipts Size of Firms for the U.S.”).

⁷⁶ *833 Code Opening Order*, 32 FCC Rcd 3153; see *supra* section III.B.

⁷⁷ See *supra* section III.B.2.c.

⁷⁸ See *supra* section III.B.2.c.

⁷⁹ See *supra* section III.C.

⁸⁰ See *supra* para. 85.

⁸¹ See *id.*

document will reduce burdens on toll free number subscribers, potential subscribers, and Responsible Organizations, including any small entities.

31. In the *Order*, we find that revising our rule to allow for an auction-based assignment methodology will benefit smaller entities.⁸² Our first-come, first-served assignment methodology has allowed larger, more sophisticated entities to invest in systems that provided enhanced connectivity to the Toll Free Database, allowing these entities to be assigned desirable numbers before smaller competitors.⁸³ An auction-based assignment methodology, by contrast, does not allow sophisticated entities this advantage.

32. In the *Order*, we also establish the use of a Vickrey single round, sealed-bid auction to assign the over 17,000 mutually exclusive numbers in the 833 toll free code, identified pursuant to the *833 Code Opening Order*.⁸⁴ We conclude that the use of this type of auction is appropriate because it is simple to participate in, addressing concerns that an auction-based assignment methodology is more complicated than the first-come, first-served approach.⁸⁵

G. Report to Congress

33. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁸⁶ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁸⁷

⁸² See *supra* para. 21.

⁸³ See *id.*

⁸⁴ *833 Code Opening Order*, 32 FCC Rcd 3153; see *supra* section III.B.

⁸⁵ See *supra* section III.B.2.a.

⁸⁶ See 5 U.S.C. § 801(a)(1)(A).

⁸⁷ See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Toll Free Assignment Modernization*, WC Docket No. 17-192; *Toll Free Service Access Codes*, CC Docket No. 95-155.

This Commission has a history of doing innovative things with auctions. Just last month, we completed the Connect America Fund Phase II reverse auction to allocate nearly \$1.5 billion toward deploying broadband in unserved parts of rural America. This is an important departure from the old way of doing things: It efficiently targets funding where it's needed most and promotes competition.

Of course, until a few decades ago, it was thought to be radical to award spectrum via auctions. But it didn't take long after auctions began in the early 1990s for nearly everybody to concede their wisdom. So far, the FCC has successfully held 90 spectrum auctions. And following our lead, numerous other countries have followed our approach.

So today, I'm excited that we're extending our use of auctions. Currently, toll free numbers are allocated through a system that rewards regulatory arbitrage: The winners are typically those with computer systems that can quickly grab desirable numbers from the toll free number administrator's database. This means numbers might not be put to their highest-valued use. But going forward, we'll let the market allocate more efficiently the roughly 17,000 toll free numbers in the new 833 code—numbers in which many have expressed an interest.

Thank you to the staff who worked tirelessly on this effort: William Andriele, Joseph Calascione, Octavian Carare, Matthew Collins, Alex Espinoza, Heather Hendrickson, Daniel Kahn, Rachel Kazan, Pam Megna, Kris Monteith, Eric Ralph, Michelle Selater, and Ann Stevens from the Wireline Competition Bureau; Scott Mackoul, Eliot Maenner, Gary Michaels, Martha Stancill, and Margie Weiner from the Wireless Telecommunications Bureau; Larry Atlas, Terry Cavanaugh, Rick Mallen, Linda Oliver, Bill Richardson, and Chin Yoo from the Office of General Counsel; and Evan Kwerel and Paul Lafontaine from the Office of Strategic Planning and Policy Analysis.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Toll Free Assignment Modernization*, WC Docket No. 17-192; *Toll Free Service Access Codes*, CC Docket No. 95-155.

In an age where organizations increasingly communicate with their customers via Internet-based platforms and applications, and unlimited domestic calling plans are ubiquitous, toll free numbers possess an anachronistic quality. But, despite representing relics of the legacy telephone system, toll free numbers still require Commission attention.

Consistent with the Commission's statutory obligation to make toll free numbers available on an "equitable" basis, I support exploring auctions as a way to depart from the Commission's unfair and outdated first-come, first-served allocation method. Giving away desirable numbers for free undermines justice and economic efficiency and creates perverse rent-seeking incentives for RespOrgs. As in other cases of allocating scarce public goods, more competitive bidding and less command-and-control is generally the best answer. A robust secondary market will further promote the interests of equity and efficiency and ensure that valuable resources are not tied up in enforcing ineffective rules against reassignment.

Despite my support for implementing an 833 Auction, I would have pushed this experiment further by extending market-based principles to the assignment of the auctioneer role itself. While Somos may be competent to administer the toll free numbering database, managing an auction is an entirely different skillset. And, without any concrete analysis of Somos' costs of running the auction submitted to the record, we run the risk of undermining the auction's financial success and creating uncertainty in Somos' future tariff filings. This forces me to ponder, exactly how is it that no one asked what Somos' estimated costs would be? For future toll free auctions, I urge the Commission to subject the auctioneer role to a competitive bidding process, rather than designate it to the toll free administrator automatically.

I also view the decision to forego multiple round bidding as a missed opportunity. The Commission has repeatedly stated that simultaneous multi-round auctions are preferable to other bidding mechanisms, by providing the best opportunity for price discovery, value maximization, and bidder flexibility. In the case of toll free numbers, which may be substitutable in certain cases, we should enable bidders to gain insight into other parties' valuations and pursue back-up strategies. Particularly if the auction turns out to be financially successful, I hope that in future toll free auctions, the Commission will experiment with a multi-round design.

Finally, while the Commission's traditional practice of distributing toll free numbers for free artificially skews demand, one of the strengths of an auction is that it allows the market to determine the value of toll free numbers. We must not undermine this gain by creating further distortions in the toll free number market. Unfortunately, the item does just that by directing the net positive proceeds of the auction towards defraying toll free numbering administration costs. This is a mistake for two reasons. First, it is unfair to taxpayers. A toll free number is a scarce public good, and any net proceeds of an auction belong in the Treasury, not in the pockets of toll free subscribers. Second, lowering the fees associated with toll free reservations artificially subsidizes and stimulates toll free subscription. We should not be in the business of picking winning and losing technologies, and I fear that the item's method for disbursing proceeds frustrates the Commission's goal of improving efficiency and equity in the nation's toll free numbering administration.

Despite these deficiencies, and the item's unnecessary and nebulous reliance on section 201(b) for regulatory authority, I nonetheless extend my support for the Report and Order. I look forward to learning any accompanying lessons from this auction. I also thank my colleagues for working with me to improve the item.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Toll Free Assignment Modernization, WC Docket No. 17-192; Toll Free Service Access Codes, CC Docket No. 95-155.*

A video recently circulated of Missouri Congressman Billy Long displaying a unique set of skills during a House Energy and Commerce Committee hearing. For those of you who don't know, Congressman Long is an auctioneer by training and he owned an auctions company before he became a member of Congress. So when the hearing was disrupted by a protester, Congressman Long used his auction bid calling skills to draw attention away from the protest and get the hearing back on track.

Now what, you might ask, does this have to do with the FCC and the toll free numbers item in particular? Well, over the past few decades, the FCC has become something of an auctioneer itself. Thanks to our spectrum auctions, the U.S. has freed up more spectrum for commercial use than any other country in the world. And the FCC has experienced so much success with auctions that we've begun using them in the universal service program to modernize the way we distribute support.

So I'm glad to see we're now carrying this experience over into toll free numbers. In the Communications Act, Congress directed the FCC to make toll free numbers available on an "equitable basis." Historically, we interpreted this to mean handing out valuable toll-free numbers on a first-come, first-served basis. But this approach has proven to be inefficient and susceptible to arbitrage and gaming. As such, it makes sense to test whether a market-based mechanism can better allocate toll free numbers. I am particularly glad that we take steps to establish a secondary market for toll free numbers, which will help ensure that these numbers are put to their highest and best use.

Thank you to the staff of the Wireline Competition Bureau for your work on this item. I look forward to learning the results of the upcoming auction of 833 toll free numbers and the takeaways for the future assignment of toll free numbers.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Toll Free Assignment Modernization*, WC Docket No. 17-192; *Toll Free Service Access Codes*, CC Docket No. 95-155.

Today we begin a grand experiment with toll free numbers. To understand why this experiment matters requires a bit of explanation. So let's back up. Under the law, the Federal Communications Commission has a duty to ensure that the distribution of toll free numbers is equitable. For decades, equitable has meant that this agency managed distribution of 800 numbers and their brethren through a command and control system. It worked like this: toll free numbers were provided on a first-come, first-served basis and a secondary market for these numbers was prohibited. But a quick online search will tell you all you need to know about the deficiencies with this approach. On the internet you will find that there is a vibrant marketplace where anyone can "buy" a toll free number from entities that openly flout our rules.

It is fair to ask if there is a better way. Here we do just that. We set up a sandbox experiment. We depart from our command and control past and announce an auction for the distribution of the 833 area code—our newest toll free number. We also liberalize policies with respect to secondary market transactions for numbers that are auctioned.

This is a smart undertaking. But as with any experiment, we have a lot to learn. It is imperative that the FCC study our 833 effort—how it operates and the outcomes that result—and then carefully consider whether or not it works better than our traditional means of toll free number distribution. I know I will be paying close attention, especially to the audit that will follow this auction—one that my colleagues have agreed to at my request.

There is one other request I had that my colleagues worked with me on—and for that I am grateful. The rulemaking that preceded this decision asked questions about how to ensure public entities that may not have the resources to meaningfully participate in an auction should be treated when toll free numbers are expanded—as they will be here, with 833. These include government authorities and non-profits providing essential health and safety services.

Today, non-profits operate a number of toll free hotlines that are a critical part of public safety. These include the National Capital Poison Control Hotline, which helps manage poison emergencies, frequently with children. They include the National Child Abuse Hotline, which needs no explanation. The National Center for Missing and Exploited Children runs a hotline to prevent childhood victimization and leads the fight against abduction, abuse, and exploitation of our youngest. In fact, last year alone the center responded to more than 10,000 reports of child sex trafficking. The National Runaway hotline is also a non-profit that provides public benefit—as does the National Sexual Assault Telephone hotline, which reported a 42 percent increase in calls just last weekend.

The initial draft of today's decision left all of these hotlines—and many non-profit public health and safety organizations just like them—out in the cold. Without the financial resources to compete, they were effectively shut out from the auction and precluded from preserving their numbers in any toll free expansion. This has been fixed—and I believe the decision now serves the public interest. As a result, this experiment with toll free area code 833 has my full support.